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BY

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Author of "The Law of Landlord and Tenant."

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THE LAW

OF

WILLS, EXECUTORS,

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COLLECTION OF FORMS.

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LONDON:
GEORGE ROUTLEDGE & CO., FARRINGDON STREET.
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PREFACE.

It is unnecessary to prove by argument the utility of a popular and practical work on the Law of Wills, and of Executors and Administrators. Probably no legal documents are so often drawn up without legal assistance as are wills. And while it is certain that upon none do more important interests depend, it is a matter of constant experience that the intentions of a testator, and the just hopes of his family and friends, are frequently defeated in consequence of the unlearned advisers to whom he has recourse with respect to the proper mode of expressing his wishes in regard to the disposition of his property, or to the legal manner of executing the testamentary document which is to give effect to them. On the other hand, there can be no doubt that much useless and expensive litigation, and many distressing family dissensions, originate in fancied claims, which a little practical knowledge would show to be unfounded; or that, from the same cause, many persons fail to obtain that to which they are justly entitled. It is the object of the First Part of this little treatise to explain as clearly, and at the same time as accurately, as may be, the law with respect to the execution of wills, to the powers of testators, and to the framing, effect, and

construction of testamentary instruments. The Second Part is devoted to the Law of Executors and Administrators. There are few duties of a more important character than those which devolve upon such persons. We are all liable to be called upon, at some time or other, to act in this capacity. Where considerable property is involved, the assistance and guidance of competent professional advice is, or at any rate ought to be, obtained. But hundreds—we might say thousands—of small estates will not bear the expense thus entailed. The executor or administrator is then compelled to act alone. In doing so, he incurs very serious risks. We propose to assist him, by pointing out the principal practical rules by which his conduct should be guided; and the proper mode of avoiding the personal liabilities which illegal acts on his part may entail. Under the recent Probate Act, probate of wills may be taken out without the intervention of a professional man. It may be desirable to do so where the property is small, and we have therefore described with some minuteness the mode of proving a will under the new law. In the Appendix will be found an ample collection of forms of wills; together with copies of the documents necessary to be executed in proving a will, or taking out letters of administration.

9, Inner Temple Lane,
September, 1858.

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THE LAW

OF

WILLS, EXECUTORS, AND ADMINISTRATORS.

PART I.—WILLS.

CHAPTER I.

GENERAL REMARKS.—HOW TO EXECUTE A WILL.

It is impossible to estimate too highly the importance which attaches to the making of a will. A person who dies without one may, although possessed of considerable property, leave in a condition of penury those who have the greatest claims upon his bounty; or may, at any rate, be the cause of great injustice, by leaving the ordinary rules of law, which regulate the distribution of an intestate's * estate, to operate without reference to the peculiar circumstances of the case—to the wealth which may be enjoyed at the time of his death by some amongst his children,

* An *intestate* is a person who dies without leaving a will.

or to the greater or smaller degree in which he may have assisted others during his lifetime. It may therefore be asserted, that every man who has anything to leave, and does not provide for its distribution by a properly-executed will, commits a grave moral offence: and it is our object, in the following pages, to furnish such information with regard to the method of preparing and executing a will, and to the manner in which it will operate when prepared, as will enable anyone to make a satisfactory disposition of his own property, and in most cases to form an intelligent opinion with respect to any instrument by which his interests may be affected. We have yet another object. It may happen to any of us to be called upon to undertake the duties of an executor or administrator. Both those offices entail responsibilities of a very serious character. No doubt, where there is a considerable amount of property involved, it is desirable that the executor or administrator should act constantly under legal advice; but there are a vast number of small properties which would be entirely absorbed if this system of management were resorted to. The executor or administrator must then, except in cases of great difficulty, act upon his own views; and it is therefore a matter of importance that he should correctly understand the main principles of law which apply to his position, and the chief practical rules by which it is necessary that his conduct should be guided. These we hope to present to our readers in as simple and untechnical a form as possible.

In the quaint language of one of our old legal writers, a will is described as "the just sentence of our will, touching what we would have done after our death." Or, if we prefer a more modern definition, it is "an instrument by which a person makes a disposition of his property *to take effect after his death.*" The latter words of the sentence designate the fact which distinguishes a will from any other instrument. It has no sort of operation until the testator dies. It does not bind him in any way during his life. He may make as many wills as he likes in succession, and each will only remain valid so long as he allows it to continue so. He may revoke or cancel it at any moment he pleases; nor will the fact of his having "made his will" give any person any claim against him, or any hold upon his property.

No wills (except those of soldiers or sailors, of which we shall speak separately) are valid unless they are in writing; and a will is of course always written either on paper or parchment, although, in point of law, it might be written upon almost anything else. But it is almost unnecessary to say that a departure from the usual practice would be an act of great folly, and one likely to lead to great inconvenience. In like manner, although a will written in pencil would be perfectly valid, no one would use anything but ink, if there were any to be had at the time the will was made, or it was possible to wait until a supply could be procured. The will may be in any language—English, foreign, ancient or modern; and in its terms it is not

required to follow any technical forms. It is sufficient if it clearly discloses the intention of the testator with reference to the disposition of his property *after his death.* But it must be made plain that the disposition is not to take effect before that event; for if words are used importing an actual present or gift to persons named, the instrument will not have the force of a will, although it may be executed with all the forms appropriate to such an instrument: and although a man's wishes and requests with respect to the distribution of his property after his decease have been held to be absolutely binding on his executors, it is far better and safer to use terms of direct and imperative command. A will may be, and indeed generally is, written on several sheets of paper. Now it is not absolutely necessary that each sheet should be signed by the testator, or that they should be collected together when he executes the will in presence of witnesses. It is sufficient if the whole of the sheets were in the same room at the time the will was executed. But in that case parties interested might improperly interpolate one or more sheets, or, contending that others had done so, might burthen the estate with the expenses of a protracted litigation. Every testator whose will is written on more than one sheet should therefore sign and number each page, should mention at the end of the will of how many sheets it is composed, and should have the sheets carefully fastened together at the time of its execution. By following that course, it is clear that it would be almost impossible

to tamper with a will in the manner to which we have referred.

The most important and difficult point connected with the making of a will is its execution. That must be done according to the directions contained in the Wills Act,* and in another statute † subsequently passed. These require that every will shall be in writing, and shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and that such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in the presence of the testator, and that no form of attestation shall be necessary.

To take the last point first. Although, according to the statute, no attestation clause is requisite, and it would be sufficient if the witnesses signed the will as witnesses (*i. e.* signed with the word witnesses affixed to their names), still it is in the highest degree desirable to have one properly prepared. For a will with such a clause (expressly stating that the formalities required by law have been complied with in its execution) can be proved ‡ by the executor upon his own oath; but if there be no such clause, affidavits stating the facts which it should contain will have to be filed. The attestation clause may be in the following form :—

* 1 Vict. c. 26. † 15 Vict. c. 24.

‡ With respect to the *proof* of wills, see Chap. X.

"Signed by the said testator as his last will and testament in the presence of us present at the same time, who at his request have hereunto signed our names as witnesses thereto in the presence of the said testator, and in the presence of each other."

And should the will contain any erasures or interlineations, they should be noticed in the attestation clause by the following addition to the above:—

"The interlineations in the line of the page having been first inserted, and the erasures in the and lines in page having been first made."

It is desirable also that the testator should place his initials in the margin of the page opposite to each erasure or interlineation, and should call the attention of the witnesses to them. If any interlineations, not thus attested and referred to in the manner we have mentioned, appear in the will, it will be presumed, unless clear and satisfactory evidence to the contrary can be adduced, that they were made after its execution, and they will, in that case, be invalid, unless attested in the much more formal and elaborate manner required for alterations subsequent to the execution of a will.

The signature of the testator must be placed to the will before that of the witnesses. If a contrary course were adopted, the instrument would not be valid. It must be at the end of the will; and at one time this was a point of considerable importance, as it was held that if there was more than sufficient room for another

signature between the end of the will and the actual signature, the will was void; and it was often exceedingly difficult to say whether this was or was not the case. However, this difficulty is now removed by the latter of the two Acts we have mentioned. Every will, so far as regards the position of the signature of the testator, or of the person signing for him, is now deemed valid, "if the signature shall be so placed at, or after, or following, or under, or beside or opposite the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will." At the same time it must be borne in mind that no signature will give effect to any disposition or direction which is inserted below or after it in point of place, or added to the will subsequently in point of time.

The testator may either sign his name or make his mark; and he has this option even although he is able to write. Nay, wills have even been established when the testator signed in an assumed name; but it can be scarcely necessary to say that it is much better that every person who can write should sign, and that, too, in his own name.

The testator need not, according to the Wills Act, sign the will himself. It may be signed "by some other person in his presence and by his direction." And it has been decided that the person so deputed to sign may do so either in his own name or in that

of the testator—stating, however, in the former case, that the signature is on behalf of the testator. Whenever the will is thus executed by another, the witnesses should be allowed to see its execution. The testator must distinctly acknowledge the signature to have been put to the will by his direction, and on his behalf, in the presence of both the witnesses, *who must be present together*; and an express statement of the mode in which it was done should be introduced into the attestation clause. One of the attesting witnesses may sign for the testator, but we should recommend that the hand of another party should be employed.

There is one other point to be noticed in connection with the testator's signature. Although it is certainly better that it should be affixed to the will in the presence of the witnesses, it is not necessary that it should be. It is sufficient if it is "acknowledged" by the testator to be his in the presence of *both* the witnesses; *both* being present *at the same time*. In this case the witnesses must *see* the signature. They need not be permitted to see any other part of the will, nor even to know that it is a will, the signature of which they are attesting; although it is certainly highly desirable that the latter fact should not be kept from them. If it were, it might render their evidence less clear and conclusive in case the will were disputed at any subsequent period. The acknowledgment of the testator's signature should, if possible, be made ex-

pressly by word of mouth, but if he happen to be speechless from illness or infirmity he may do it by signs.

We now come to the signatures of the witnesses. And as many wills have been invalidated by an informal execution on their part, we cannot too strongly insist upon the necessity of following most strictly the following directions. They must not sign until the testator has signed or acknowledged his signature. They must, as we have already said, but can hardly too often repeat, be both present together when he does so. They must both sign in the presence of the testator, who must be able to see them sign; and it is better that he should look at them while they are in the act of signing. It is not indeed necessary to prove that the testator actually did see them sign; but the will will be void if it be shown that he *could* not do so. Even if he be blind, the witnesses must affix their names, where, if he had had his eyesight, he could have seen them. Although not essential, it is better that both witnesses should sign in the presence of each other; that neither should leave until the whole business of signing and attesting the will is concluded: for by that means they will be able to give the most clear, precise, and complete evidence upon all the circumstances attending it.

The witnesses may sign either by writing their own names, or by making their marks. Or if either witnesses is unable to write, the other, or an independent person, may guide his hand so as to enable him

to write his name. It is, however, better that a witness who cannot write should employ a mark; and better still to secure two witnesses who can write their names. Indeed this should always be done when it is possible. And it must be distinctly borne in mind that the witness must sign or affix his mark with *his own hand*, and in the presence of the testator; for the provisions of the Act, which enable the latter to depute another person to affix his signature, or to give effect to his signature by acknowledgment, do not extend to the case of witnesses.

It is obviously expedient in the highest degree to choose for witnesses persons of good character, whose evidence will be received with the most perfect credit in any subsequent proceedings. No person to whom or to whose wife or husband a legacy is given should attest a will, for although in that case the will would not be affected, the legatee would be deprived of the bequest.

No obliteration, interlineation, or other alteration made in a will, after its execution, will be permitted to change the dispositions first made, if the original words of the will can be made out,—unless, indeed, the alteration is executed and attested by the testator and two witnesses as if it were a new will. But it is expressly enacted by the Wills Act, that "the will with much alteration, or part thereof, shall be deemed to be duly executed if the signature of the testator, and the subscription of the witnesses, be made in the margin, or on some other part of the will, opposite or near to

such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will." If the words obliterated cannot be read, of course no effect can be given to them; and in this way a legacy may be annulled by simple obliteration without any re-execution. But it is very hazardous to rely upon this, as persons skilled in decyphering manuscripts may, by employing magnifying-glasses, make out the words intended to be obliterated, and, if that can be done, effect will be given to them if there be no re-execution in the manner we have described above. Interlineations should be made with ink, although effect has been given to them when made in pencil. But it is most undesirable to attempt to modify a will by interlineations or obliterations. It is always better to do it either by a new will or by a *codicil*,* which must be executed in exactly the same way as a will. When indeed the alterations are important and extensive, or other codicils have already been executed, it is better that a wholly new will should be executed, for great doubts often arise as to how far one codicil is or is not inconsistent with and therefore is or is not revoked and annulled by a subsequent one, how far the several codicils are contradictory to the will, or how far it is possible to carry out the directions contained in the whole of these documents, and as these questions —if a court of law is asked to settle them—will most

* A codicil is a supplement to a will, adding to it, modifying it, or revoking it wholly or partially.

probably give rise to continued and expensive litigation, it is much better that every man should, as far as possible, embody the disposition of his property after his death in one single instrument.

A will or codicil informally executed may be rendered valid by a later codicil duly executed, and referring clearly to it in such a manner as to show that it is intended to make such former instrument valid. If, therefore, it should be discovered that any previous testamentary instrument has been informally executed, and it is desired to give it validity by a subsequent one, care should be taken to refer to the former in the latter in the most clear and minute terms. A new will should, however, be prepared as soon as possible. Although by a codicil duly executed a prior will, not duly executed, may be confirmed and rendered valid, it is impossible by a duly-executed will to give effect to a codicil not duly executed.*

We have now fully detailed the rules to be followed, and the precautions to be observed, by an Englishman making his will in England. But as, on the one hand, so many of our countrymen make wills while permanently residing abroad; and on the other, so many foreigners—and for this purpose a Scotchman is a foreigner—make wills while permanently residing here, it may be desirable to mention very briefly the principles upon which depend the validity of instruments made by such persons under these circumstances. Now a will disposing of real property, *i. e.* of land or

* Lord St. Leonard's *Handy Book of Property Law*, p. 144.

houses, must always be made according to the form required in the country where the property is situated. If, for instance, an Englishman, whether living here or in France, have an estate in France, he must dispose of that by a will made according to the law of France. If, on the other hand, a Scotchman, although he reside in Scotland, have landed property in England, it will not go to the person to whom he leaves it unless the will in which he disposes of it is executed in conformity with the rules, and comprises the requisites we have already enumerated. But a different principle prevails with respect to the disposition of personal property. A will dealing with that must be made in accordance with the law of the country where the person is *domiciled* * at the time of his death. Thus the will of a British subject domiciled in France must, so far as it disposes of personal property, be made and executed according to the law of France; while the will of a Frenchman domiciled in England must, so far as it makes a similar disposition, be made according to our law.

The will of an English subject domiciled abroad, and disposing of personal property, should, however, be made and executed according to the English law where there is, as in some cases, a treaty to that effect

* A person is said to be domiciled in a foreign country when he takes up his residence permanently there, without any intention of returning to his own country. If he still retain that intention, however long he may reside abroad, he does not acquire a foreign domicile, and in that case his will must still be made according to the English law.

between this country and the country of domicil. For instance, we have a treaty with Turkey to this effect. And as it is the law of Belgium that the wills of foreigners domiciled there are valid, if made according to the law of the country to which they belong, the large body of our countrymen who reside in that country are relieved from any difficulty they might feel if required to execute their testamentary dispositions in accordance with the law of Belgium.

WILLS OF SOLDIERS AND SEAMEN.

The wills of soldiers "being in actual military service," or of seamen being "at sea," and dealing merely with *personal property*, stand on a peculiar footing. These persons may not only make their wills by a writing neither signed, witnessed, nor attested, but they need not even commit their wills to writing at all. They may make what is called a *nuncupative will*, by announcing, by word of mouth, to one or more witnesses, what disposition of their property they wish to have made after their death: the testator, at the same time (and this is an indispensable requisite), calling upon such person or persons to bear witness that it is his will.

The limitation with respect to seamen, that they must be "at sea," means, that they must be on a voyage, and, therefore, would not shut out the verbal or unproved will of a sailor whose ship was lying in a foreign port, or of one who might have then casually

gone on shore and met with an accident, which terminated fatally. Although he might make his will while on land, it would still be privileged.

The words "in actual military service," used with reference to soldiers, confine the power to make a *nuncupative* will to those who are on an expedition. It has been decided that the soldier cannot make such a will while quartered in barracks, at home, in India, or in the colonies. It need indeed hardly be remarked that it is most foolish for either soldier or sailor to avail himself of the power thus given to him. It is obvious that there cannot be a wider field for fraud than in declarations which persons may choose to make as to the verbal wills of men who are dead. Indeed so gross were the abuses that occurred, that by the Merchant Shipping Act, passed in 1854, the captain of any ship (in the mercantile marine), in which a seaman dies while on a voyage, is ordered forthwith to sell all his effects, on board at the time of his death, by auction at the mast: the sum thus realized, any money which he may have had, and any wages due to him, are to be paid over to a shipping master in a British port, or a British consul in a foreign port, accordingly as the ship arrives and remains for forty-eight hours at the one port or the other. And power is then given to the Board of Trade to refuse to pay or deliver any such wages or effects to any person claiming to be entitled thereto under a will made *on board ship* unless such will is in writing, and is signed or acknowledged by the testator

in the presence of the master, or first or only mate of the ship, and is attested by such mate or master. And they have a like discretion to refuse to pay or deliver such wages or effects to any person not being related to the testator by blood or marriage who claims to be entitled thereto under a will made *elsewhere than on board ship*, unless such will is in writing, and is signed or acknowledged by the testator in the presence of two witnesses, one of whom is some shipping master, appointed under this Act, or some minister or officiating minister, or curate of the place in which the same is made, or, in a place in which there are no such persons, some justice of the peace or some British consular officer, or some officer of the Customs, and is attested by such witnesses. Wherever any claim, made under any will, is rejected by the Board of Trade on account of such will not being made and attested as just mentioned, the wages and effects of the deceased are dealt with as if no will had been made—*i. e.* they are distributed amongst his nearest relations.

The execution of wills of seamen and marines belonging to the Royal Navy is still more stringently regulated by the 48th section of the 11 Geo. IV. & 1 Wm. IV. c. 20. By this it is enacted that no will made by such a person who either shall be or shall have been in the naval service, shall be valid or sufficient to pass any *wages*, *pay*, *prize-money*, *bounty* money and allowances, or other moneys, payable in respect of service in Her Majesty's Navy, unless such will shall contain the name of the ship to which the

person executing it belonged; that in case any such will shall be so made by any petty officer, seaman, or marine, while belonging to and on board of any ship as part of her complement, the same shall be executed in the presence of and be attested by the captain, or (in his absence) by the commanding officer for the time being; and if made in any hospital ship, or hospital, or sick quarters, at home or abroad, by the governor's physician, surgeon, assistant-surgeon, agent, or chaplain of any such hospital or sick quarters; or if made on board any ship or vessel in the transport service, or in any other merchant ship or vessel, by some commission or warrant officer, or chaplain in the navy, or some commissioned or warrant officer or chaplain belonging to the land forces or marines, or the governor, physician, surgeon or agent of any hospital in the naval or military service, if any such shall be then on board, or by the master or first mate thereof; or if made after he shall have been discharged from the service, if the party making the same shall then reside in London or within the bills of mortality, by the inspector of seamen's wills, or his assistant, or clerk; or if the party making the same shall then reside at or within seven miles from any part or place where the wages of seamen are paid, by one of the clerks of the treasurer of the navy resident at such port or place; or if the party making such will shall then reside at any other place in Great Britain or Ireland, or in Guernsey, Jersey, Alderney, Sark or Man, by a justice of the peace, or by the minister or officiating minister, or

curate of the parish or place in which the same shall be executed; or if the party making the same shall then reside in any other part of Her Majesty's dominions or in any colony, &c., by some commission or warrant officer or chaplain of the navy, or commission officer of marines, or the commissioner of the navy, or naval storekeeper at one of the naval yards, or a minister of the Church of England or Scotland, or a magistrate or principal officer residing in any of such places respectively; or if the party making the same shall then reside at any place not within Her Majesty's dominions or any of the places last mentioned, by the British consul or vice-consul, or some officer by a public appointment or commission, civil, naval or military, under Her Majesty's Government, or by a magistrate or notary public of or near the place where such will shall be executed. It is also provided that a will shall not be written on the same paper as a power of attorney; and that the inspectors of seamen's wills may pass the same if it shall appear to the satisfaction of the treasurer of the navy that in the attestation thereof the captain's signature has been omitted by accident or inattention.

It will be observed that the regulations of this statute only apply to wills disposing of "wages, pay, prize-money, &c., payable in respect of services in Her Majesty's Navy." Wills disposing of other property follow the general law. If he is "at sea" he may make them on the laxer mode which we have described at the commencement of this section; if he is residing on

shore he must follow the provisions of the Wills Act.

There is one important point in connection with the wills of seamen which it is proper to mention. They are absolutely void if given as a security for a debt. The mere fact of there being a debt due from the testator to the legatee will not indeed avoid the will. But if the legatee happen to be the agent * of the seaman there must be clear proof not only of the subscription of the deceased to the instrument, but also of his knowledge of its nature and effect. And it will not be valid unless it can be shown that the testator did not give it as a *mere* security, but really intended to dispose of the whole of his property in the manner stated.

CHAPTER II.

WHO MAY MAKE A WILL.

It is stated in a work of the greatest authority, that it may be laid down generally that all British-born subjects are capable of disposing of their property by testament, who have sufficient discretion, their own free will, and have not been guilty of certain offences.

* The main object of the law is to protect the seamen against the tricks and schemes of this rather notorious body of men.

It will evidently, therefore, be most convenient to consider rather who cannot than who can make a will. And we shall begin by stating in what cases persons cannot make a will for want of legal discretion.

Since the passing of the Wills Act, which came into operation on January 1, 1838, no person under the age of 21 can make a will in any part of the United Kingdom.

An idiot or a madman, who has been in that state from birth without any lucid intervals, cannot make a will; and it is presumed that a person who has been deaf and dumb from birth is an idiot. This presumption was no doubt well-founded enough in former times, before the methods of teaching these unfortunates had been discovered. But it is now in many cases fallacious, and wherever it is contrary to fact, it may be rebutted. If, therefore, a deaf and dumb person can be shown to be in sufficient possession of his senses to make a will, the instrument will be valid.

A blind man may make a will, but in that case evidence must be forthcoming to show that he knew what was written down as his will, and that he approved of the disposition of his property thereby made. But it is not necessary to show that the identical paper which he executed as his will was ever read over to him.

It is unnecessary to say that most of the contests which take place with reference to the validity of wills, in consequence of the doubtful competency of the testator, do not arise in any of the above cases. They occur when wills are made by lunatics

who have intervals of sanity, by persons whose sanity is questionable, or by persons who, although not lunatics, have not what the law considers a sound disposing mind. There are few subjects on which it is more difficult to lay down rules which shall have any practical value than with reference to the circumstances under which a will is likely to be supported or declared void on either of these grounds. And all we can do without incurring the danger of misleading, is to mention a few of the most general principles which are firmly established. Now it has been laid down that the test of a person being of unsound mind in a legal sense is the existence of a delusion, or a *belief in fact*, which an ordinary person would not credit; but that mere eccentricity of habits, or perversion of feeling or conduct even amounting to what some medical men term "moral insanity," would not constitute legal insanity. An illustration will perhaps make our meaning clearer. If a father falsely believed, without the slightest reasonable cause or pretence, that his children were continually endeavouring to poison him, and, under that delusion as to facts, made a will leaving his property away from them, that will would be avoided on the ground of insanity. But if he merely, for no assignable reason, and with no reference to any supposed facts, took a violent and unnatural hatred to them, that would not be insanity; and a will made under the influence of this feeling would not be avoided. While a lunatic is suffering under a delusion as to fact, he can make no will. But a lunatic who has lucid intervals

may, during one of these, make a will disposing of his property. Still, if the habitual insanity of the testator has been once established, or is admitted, it will be for the parties seeking to establish the will to prove the fact of the lucid interval by the clearest evidence. To constitute a lucid interval, there must be more than an apparent absence of those delusions which constitute insanity. The necessity for this is clear, for as a large proportion of lunatics are capable of conversing with perfect calmness, propriety, and coherence on a large number of subjects, it would otherwise be easy for persons who wished to procure a will from a lunatic, to accomplish their object merely by avoiding the subjects with respect to which his infirmity displayed itself during the interview or interviews requisite for the preparation and execution of the will. The only way to ascertain that there is a real lucid interval, is to question the patient on the very subjects upon which the delusion has existed, and to ascertain from him that he distinctly recognises it to be a delusion.

But a will may, under some circumstances, be invalid although the testator was not at the time of executing it absolutely insane; although he did not labour under such a delusion as we have described; and although there might be nothing in his state to warrant his confinement or the issue of a commission of lunacy. The law requires that, at the time of making his will, a man should be, as it is said, "of sound disposing mind, memory and understanding." And in

order to constitute a sound disposing mind, the testator must not only be able to understand that he is by his will giving away his property to those whom he is making the objects of his bounty, but must also be capable of understanding the extent of his property, the nature of the claims of others upon his generosity, and the fact that he is by his will excluding them from any participation in his property. If a testator is reduced, by the imbecility of age or the approach of death, to a point at which he is incapable of understanding and considering these things, any will to which he may then put his hand can be set aside. But if no suspicion of fraud exist, if the will is consistent with his known affection for particular persons, and with his previous declarations, if its execution was attended by circumstances showing that he really knew what he was doing and wished to do it, then the courts will not set aside a will, even although the testator was at the time of making it actually *in extremis*, and although the instructions for its preparation were given through one of the legatees.

A will will also be void if the testator was drunk at the time he executed it.

But although a person may have legal discretion to make a will, it may not be made with the free will of the testator, and in that case it is void. Thus a will obtained by fraud is invalid. And so also is a will executed under the pressure of actual force, although all the requisite formalities were complied with, and the testator was perfectly in his senses at the time.

This would be so also if he or she were subjected to an amount of apprehension and fear, which, considering his or her age, sex and state of health, might reasonably be supposed to exercise an uncontrollable influence over the mind.

The presence even of something short of this may invalidate a will. It is sufficient if the testator be under what is called "undue influence," although, be it remarked, nothing can be more difficult than to define what this is, or to determine whether any definition which may be given is applicable to any state of facts which may arise. It is clear, however, that although the testator may be weak in health and intellect, and that while in that state another may obtain such influence over his affections and attachment as to be able to *persuade* him to make a particular will, that does not constitute undue influence. The influence exercised must amount to moral coercion. It must be such as to prevent the exercise of discretion. And if such an ascendancy be obtained, as it often is, even although the person on whom it is exercised have no fear of physical violence, a will procured by this means may be set aside either altogether, or so far as it is in favour of the person by whom the "undue influence" has been exercised. The records of our courts of justice are, we need hardly remind those who are in the habit of reading the daily journals, full of cases in which wills are questioned on this ground, and any persons who are living much with a testator of weak intellect cannot, if he desire to make a will in their favour, be too

cautious to see that previous to its execution he has full opportunities of communicating with uninterested persons on the subject of his will. Their evidence as to the real motives and feelings under which he acted will be of vital importance in case of subsequent litigation.

We have already mentioned in the last chapter the enactment by which the Legislature has thought proper to protect one particular class of persons—seamen—against the probable results of their careless habits, their frequently urgent wants, and their proverbial ignorance of business.

A married woman is unable, without the assent of her husband, to make a will, except of property settled to her separate use; or in virtue of what is called a "power" inserted in some previous settlement; or simply to appoint an executor to an estate for which she is executrix. The husband may of course waive the absolute interest which the law vests in him, both in property originally his own, and in that which he derives through his wife, and may allow her to dispose of any part of it. But even if he have originally consented to her making a will, and have testified his assent in writing, he will be able to retract it at any time before the will is proved.*

The last class of persons unable to make a will are those who have been guilty of criminal conduct. Now, persons attainted or outlawed for high treason can make no valid will either of real or of personal pro-

* As to proof of wills, see Chap. X.

perty. And it is also clear that persons outlawed or attainted for petty treason and for felony cannot make a will of personal property. The better opinion, however, seems to be that they can make a will of real estate. That at any rate is the position of persons who are outlawed for debt. Their wills, and also those of persons upon whom a verdict of *felo-de-se* has been pronounced, are valid to pass real estate, but void as to personalty.

It only remains to add a word with respect to the wills of aliens, which stand upon a peculiar footing. An alien friend, that is to say a native of a country with whom we are at peace, can make a will of personal property as freely as a British subject. The will of an alien enemy (*i. e.* the subject of a country with which we are at war) will be invalid for any purpose unless he be authorized by the Crown to make one.

As aliens cannot legally hold a larger interest in *land* than a lease for 21 years, they can of course only bequeath such a term. As, however, the Crown is the only person who can disturb them in the possession of land in which they have acquired a larger interest (a freehold or a copyhold for instance), so no one but the Crown can oust the person to whom they have bequeathed it. He will be entitled to it, and will be able to retain it against every one but Her Majesty.

CHAPTER III.

WHAT MAY BE BEQUEATHED BY WILL.

EVERYBODY may dispose by will of any property which is in his possession, or to which he has a right at the time of his death, and which, in the absence of a will, would descend to his heirs or pass to his personal representatives* for division amongst his next of kin. This has long been the case as to personal property, but so complete a power of devising land has only been acquired within a comparatively recent period. At one time, if a man having made his will whereby he bequeathed "all" his land, subsequently acquired additional parcels, the will would only have operated upon that portion of which he was in possession at the time of its execution. But a will now speaks as from the moment before the testator's death, and words importing a bequest of all his property will pass to the legatee all of which he is then the owner, or to which he may then be entitled. At one time, too, the power to make a will extended only to real property of which a man was in possession at the time of so making it, but by the Wills Act a man may now bequeath all to which he has a right to succeed on the occurrence of a given contingency. For instance, supposing an estate (and the same is true of personal

* To his executors or administrators, as will be explained in a future chapter.

property) be settled in such a manner that upon some contingency happening it would come to the testator, then, although at the time of making his will it is not certain whether that event ever will happen, and whether he will ever obtain the estate, he may insert in his will a clause bequeathing it; and if he do come into possession before his death, such estate will go to his legatee. And again, supposing that property be held on certain conditions, that they have been broken, and that the breach entitles the testator to enter into its possession, then, although he has not done so, he may bequeath his "right of entry" as it is called to a legatee, who would be able to enforce it in like manner as the testator might have done. In point of fact, it may now be said that a man may pass by his will everything which he might have dealt with, as he liked, during his lifetime. There is indeed one exception. It may perhaps be known that a good deal of land is entailed, *i. e.* settled upon a particular person, and the heirs male of his body. The effect of this is, that it will pass by descent to his male descendants; and that he cannot deprive them of their right to succeed him without executing deeds of a particular kind, which it is not necessary to describe here. He cannot disentail property by will; and, therefore, although if he had liked he might have obtained the absolute power over it during his life, he cannot bequeath it.

A large portion of the land in many counties of England and Wales is copyhold, and it may therefore

be as well to mention briefly that at present any owner of copyhold land, whether he has been admitted to it or not, may bequeath it by a will executed in the ordinary form, and without going through the previous solemnity of surrendering it in the Manorial Court to the use of his will, as was at one time necessary.

CHAPTER IV.

WHO MAY BE LEGATEES.

Any British-born subject may receive a devise* or legacy of any real or personal property, which may lawfully be devised or bequeathed, unless he be an attesting witness to the will, whereby such property is left to him. It is obvious that nothing could be more dangerous than to allow a will to be supported by the testimony of persons who are beneficially interested in its contents. And it was therefore provided by the 15th Section of the Wills Act "that if any person shall attest the execution of any will to whom, *or to whose wife or husband,* any beneficial devise, legacy, estate, interest, gift or appointment

* *Real property* (*i. e.* land) is said to be *devised; personal property* (*i. e.* goods, chattels, money, &c.) to be *bequeathed.* Both words have precisely the same meaning.

of, or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void; and such person so attesting shall be admitted as a witness to prove the execution of the will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will."

Infants (including infants *en ventre sa mère*), married women and insane persons, are not incapacitated from taking by devise or bequest, (although they cannot manifest their acceptance, which will be presumed,) except where the bequest is of a character to be injurious rather than beneficial to the devisee or legatee. And although a husband cannot during his lifetime convey land or other property to his wife, he may leave it to her by will.

An alien friend may be a legatee of personal property, but a legacy to an alien enemy may be forfeited to the Crown.

With regard to devises of real property, the case is somewhat different. No alien, unless he have been naturalized, can hold any lands or houses for more than 21 years. He may, it is true, take the land, houses, &c., under the will, and retain them against

the heirs or any other private person, but they will be forfeited to the Crown if claimed. It is, however, by no means certain whether they will be immediately forfeitable, or whether the alien can hold them for 21 years, the Crown being only able to seize them at the expiration of that term.

A bankrupt may be a legatee; but if the testator dies at any time before the certificate is allowed, the legacy passes to the assignees.

Land cannot be devised to any corporation (with the few exceptions we shall presently specify) unless the Crown has granted to such body a licence to hold land in *mortmain,** as it is called.

Bequests of money or other personal estate for charitable purposes are valid, unless indeed such money or personal estate were given for the purchase of land, or for a purpose which rendered it necessary that land should be purchased.

No estate or interest of any kind in land can be conveyed for charitable purposes (with the exceptions we shall presently mention), unless the disposition be made by deed, sealed and delivered in the presence of two or more credible witnesses, and enrolled in the Court of Chancery within six calendar months after the execution thereof; and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition,

* Lands are said to be held in *mortmain* when possessed by corporations.

limitation, clause or agreement whatever for the benefit of the donor or grantor, or of any person or persons claiming under him. No gift of an estate in land, or of money to be laid out in land, can, therefore, as a general rule, be made by will.

Land may, however, be left to the Universities of Oxford and Cambridge; to the Colleges of Eton, Winchester, and Westminster; and to the governors of Queen Anne's Bounty. And the statute 43 Geo. III. c. 108, authorizes, under certain limitations, the devise to any persons or bodies, politic or corporate, if not exceeding five acres of land, for the erection, repairs, purchase or founding of churches or chapels where the liturgy of the United Church of England and Ireland shall be used; or of the mansion-house of the minister, or of any outbuildings, offices, churchyard or glebe for the same respectively. The Commissioners of Greenwich Hospital, and of the Royal Naval Asylum, the Members of the Seaman's Hospital Society, and the President, Vice-president, Treasurer and Governors of the Magdalen Hospital, are enabled by several Acts of Parliament to take land by will. The Governors of St. George's Hospital may take by will any money secured or charged upon land.

Although it is legal to bequeath money for *charitable* uses, yet the law does not permit it to be so given for what it calls *superstitious* uses. Such is a bequest for the good of the soul of the testator; or a bequest of sums to be paid to certain Roman Catholic priests and chapels as soon as possible after the death

of the testator, that he may have the benefit of their prayers and masses; or a bequest of a fund to print and circulate a treatise inculcating the absolute and inalienable supremacy of the Pope in ecclesiastical matters.

Legacies given to trustees to promote the teaching of the Catholic religion, or to endow its priesthood or places of worship, are now, however, perfectly valid. And so are bequests for maintaining or endowing, or propagating the faith of a society of Protestant Dissenters promoting no doctrines contrary to law although such as may be at variance with the doctrines of the Established Church.

Such legacies, however, will not stand if they have been obtained by an abuse of the relation in which his spiritual guide may have stood to the testator. For in one case the grant of an annuity fraudulently obtained by a dissenting minister having a spiritual ascendancy over a woman who was in a state of religious delusion, was set aside upon principles of public policy. While in another instance, and upon the same grounds, a settlement made by a widow upon a clergyman and his family, was set aside because it had been obtained by undue influence and abused confidence.

CHAPTER V.

THE REVOCATION AND REVIVAL OF WILLS.

A WILL may be revoked in four ways:—1. By another will, or by a document executed and attested as a will, containing a clause expressly and explicitly revoking it. 2. By a subsequent will or codicil containing dispositions inconsistent with those in the former will. 3. By the destruction of the first will with the intention on the part of the testator thereby to revoke it. 4. By marriage.

Now with respect to the first mode of revoking a will, it is only necessary to say that the testator must be extremely careful to see that all the formalities to which we referred in our first chapter, when treating of the execution of a will, are strictly observed with reference to the instrument by which it is to be revoked; and that he must also use words distinctly showing that he does then revoke the former will. He should say, "I do hereby revoke, &c.," for if he were to use words less explicit, it might leave open a door for the contention, that he had not actually revoked, but had only shown an intention of revoking at some future time, and by some other instrument. And however clearly that intention might be expressed, it would have no effect unless it were actually carried out and completed.

No one should ever trust to the second mode of re-

vocation. If a testator really intend to revoke a former will, he should insert in his subsequent will or codicil an express clause of revocation. For, of course, a subsequent will or codicil only revokes *those portions* of a former instrument, which are *inconsistent* with those in the later. And when, after a man's death, two testamentary instruments are found, neither containing an express revocation of the other, the courts are anxious, if possible, to give both such a construction as may enable them to stand together. It might then very possibly happen—especially if language of any looseness or inaccuracy were used,—that the Judge before whom the matter came, might hit upon some construction very different from that which was in the testator's mind when he wrote either instrument, and by means of which his intentions might be defeated. Validity might be given to the whole or part of an instrument which he intended to revoke, and the dispositions of that which he regarded as his only will might be limited or modified. The danger of this happening would be increased, if the second instrument were a codicil, for the object of the latter is not to supplant but to vary a will. Whenever, therefore, you intend to annul a will or any part of it, insert in a subsequent will or codicil one or more clauses expressly revoking the whole of the instrument or the specific clauses in it which you do not wish to stand.

A caution may be here appropriately given with respect to the extreme importance of dating correctly every will or codicil. For if two undated and con-

flicting wills were found after a man's death, both would be invalid, and his property would be divided amongst his next of kin, as if he had died intestate.

If a man by a subsequent will or codicil were to make a disposition of his property different from that contained in a former one, under and on account of a false impression with respect to a matter of fact, the dispositions of the later will would not be carried out, if it could be shown that they were made by the testator because of the erroneous belief under which he was labouring. For instance, if a man were to leave a legacy to a woman whom he believed to be his wife, and after his death it turned out that she was not really such, because without the knowledge of the deceased she had in her supposed marriage to him committed bigamy—the legacy would fall to the ground. Again, if a father who had left his property to a child, subsequently bequeathed it to another person, in the belief that his child was dead—then if it turned out that the latter was in reality living, the subsequent disposition would be invalid.

If it is intended to revoke a will in the third manner to which we have adverted, unquestionably the best plan is to destroy the entire document by burning. Of course, if the will is wholly consumed, there can be no doubt that it is revoked. And as doubts might again arise (as they have arisen) as to the completeness of the revocation, if it were only partially burnt, it is advisable that a testator should be careful to see that the destruction is complete. And this must be done either

by the testator himself, or by another person *in his presence, and by his direction.* If, therefore, a testator were to give directions to another to burn his will *after* his death, the destruction under such circumstances would be no revocation, but the contents of the will might be proved by the production of a copy or draft, or by the evidence of any person acquainted therewith, and the testamentary dispositions thus evidenced would stand good. And as it is not only necessary that a will should be destroyed, but that it should be destroyed *with the intention to revoke it*, a similar result would follow if it were destroyed accidentally, or by the testator while in an unsound state of mind. The case is the same where a wife, having power to dispose of property, makes a will, and afterwards destroys it under the compulsion of her husband. The destruction will be of no effect if the contents of the will can be proved.

The will may be revoked by tearing or cutting it up, or even by tearing or cutting out the signature of the testators, or those of the attesting witnesses. It might even be revoked by entirely obliterating the signature; but no one should trust to this, as, if it were possible to read the signature under the obliteration, the will would still stand.

Under the old law a will could be revoked by striking the instrument or signature through with a pen, but the Wills Act expressly abolishes this method of annulling a testamentary instrument.

Not only may the whole will be revoked in the

manner we have described, but particular bequests may be withdrawn by cutting or tearing out those portions of the document which refer to them.

As it is not unusual to execute wills in duplicate, it is necessary to caution persons who may desire to revoke their wills in the mode we are now considering, that they must in that case be careful to destroy both copies. It is true that if the testator were proved to have destroyed one, or if that which had been in his possession were found, after his death, mutilated in such a manner as to amount to a revocation, there would arise a presumption that he had intended to revoke both instruments. But as plausible evidence might possibly be brought forward to repel that presumption, and as in the case of total destruction it might be difficult to make out either that the testator had a copy of the will in his possession, or that he destroyed it, the only safe way is to see that both copies are totally destroyed.

The fourth way in which a will may be revoked is by the marriage of the testator after its execution. This is equally the case whether the testator is the husband or wife. A man should therefore make a new will immediately on his marriage, or if he intend the old one to stand, he must re-execute it with all the formalities described in our first chapter, or execute a codicil confirming it.

It may happen that after a man has revoked his will circumstances may lead him to desire to revive it—to restore it to its former validity. This can only be done

either by its re-execution, or by the execution of a codicil duly executed, declaring an intention to revive it. This intention to revive will be shown, not merely by a distinct statement to that effect, but by a distinct and precise reference to the formerly-revoked will as one actually existing and valid.

CHAPTER VI.

THE CONSTRUCTION OF WILLS.

It is a matter of unhappy notoriety that more difficulty arises in the construction of wills than of any other class of legal documents; that the litigation arising out of them when ill drawn and loosely expressed frequently absorbs no inconsiderable portion of the property bequeathed; and that, even after all this loss has been incurred, it is too often matter of doubt whether the intentions of the testator have not been defeated. This does not arise from the excessive technicality of the law applicable to the subject. For while in other instruments particular words are required to create or pass particular estates or interests, any words which clearly express the testator's wishes will suffice to effectuate them when contained in a will. It is rather due to the number, the complication, and, in some cases, even the obscurity of the objects sought to be attained. This renders the drawing of a good will

one of the most difficult branches of conveyancing, and it cannot be too often impressed upon all who wish to make unusual dispositions of their property, to provide for its going to different persons in succession, or to some in one contingency, and to others in a second; that they must not only entirely abandon all intention of making their own wills, but that they must be exceedingly careful to procure the very best professional advice.

It would be idle in a work of this character to attempt any explanation of the many difficult questions which arise in the construction of the more elaborate class of wills. At the same time, as doubts and difficulties frequently arise in the construction of even simple wills, from the want of a very slight acquaintance with some of the most elementary rules with respect to the interpretation of the whole instrument, or the meaning of particular expressions, we shall endeavour to give such information as may be of practical utility within the limits to which we have referred.

We have already said that technical words are not necessary to render valid a disposition by will. At the same time, if they are used in reference to bequests of land, the testator will, in the absence of any evidence to the contrary, be presumed to have used them in their legal sense.* If, indeed, the will is only one of

* This is a point that should be carefully borne in mind. There is no doubt that a testator's intentions have been often defeated by the use of technical language, of the full bearing of which he was unaware from his ignorance of the law.

personalty, even technical terms will be construed according to the ordinary acceptation of language, in the ordinary transactions of mankind.

A will must be construed as a whole. The entire instrument must be read with a view to ascertain the testator's intentions, and of giving effect to them as completely as possible. And one portion will be admitted to explain another—to enlarge or restrict the meaning of particular words or expressions used.

I. WITH RESPECT TO THE DESCRIPTION OF LEGATEES.

If a bequest is made to "children," either of the testator or of any other person, without their being mentioned by name, all persons who at the time of the testator's death fall within the class of "children," either of himself or of the other person, will be entitled to the benefit of the legacy, unless the testator's words clearly showed that he meant the bequest to be confined to "children" living at the time he made a will.

It is not unusual, where there is landed property which will descend to the eldest son, to leave a certain sum to be divided amongst the "younger children." In that case, if after the will is made one of the then younger children become the eldest by the death of the heir, he will cease to be entitled to a share in the provisions for "the younger children."

The word "children" does not apply to any beyond immediate descendants. It will not embrace grand-

children, unless at the time the will was made there were none but grandchildren in existence, and unless it was clear from the will taken as a whole that the word "children" was intended to be used in the sense of "issue," that is of descendants generally.

If a husband leave a legacy to his "wife," or the "wife" of another, without naming her, it will only go to the individual who answered the description at the time the will was made.

Under the words "nephews and nieces," grand-nephews and grandnieces are not included, and when a bequest is made to "cousins," first cousins alone (if such are in existence) will be entitled to the benefit of it.

If it is desired to leave bequests to "servants," it is very desirable that each class of servants who are to be benefited should be distinctly pointed out, as the words "servants," "domestic servants," &c., are too general in their character, and have often given rise and probably will again give rise to doubts, whether they embraced particular persons employed by the testator.

It sometimes happens that the testator makes a mistake either in the name or the description of a legatee. If no person can be found answering both name and description, and it is yet at the same time clear that the testator intended to leave a legacy to some one, the Court of Chancery will endeavour to rectify the testator's error by reference to the contents of the will, or by hearing evidence to show who was the party to

whom the testator really intended to leave his property.

II. WITH RESPECT TO THE DESCRIPTION OF LEGACIES.

If the testator leaves to another "all his goods and (or *or*) his chattels," that will import a bequest of his whole personal estate of whatever kind, whether in goods, money, or securities. If the bequest is limited "to goods and chattels" at a particular place, only such things pass, as in the language of the law "savor of the locality," that is, such things as are there and in themselves of value; but bonds, bills, promissory notes, and securities for money, will not pass, for they are not themselves property of value; they are merely securities for that which is not on the spot. Under the term "household goods, furniture or effects," are included personal chattels, applicable to the use or convenience of the householder, or to the ornament of his residence, and they comprehend, besides furniture, plate, linen, china, pictures, and other works of art used ornamentally. But they exclude articles for the purposes of trade or pictures kept in a gallery (although part of the house), and not serving to decorate the portions of the building used for domestic purposes.

"Stock on a farm" includes both movables and the growing crops.

If a testator leaves, as he does not unfrequently, all his "money in hand," that will pass money at a bank, as well as that which he may have in his house, or on his person, at the time of his death. And it should

always be borne in mind that the words "securities for money" apply to stock in the funds, as well as to bills, promissory notes, and mortgages, but that they do not extend to shares in public undertakings.

If annuities are given by will the following distinctions should be attended to. A simple gift of "an annuity of so much" will enable the legatee to receive the sum mentioned annually during his life. If, however, a sum be bequeathed for the purchase of an annuity, the legatee may, at the death of the testator, defeat his probable intentions by demanding to have the sum in question paid down to him at once instead of the annuity; that is, of course, if the testator have not expressly or by necessary implication forbidden such a course. Sometimes it is attempted to attain the result of an annuity, by the bequest to a legatee of the interest or produce of certain money, amounts of stock in the funds, &c. In this case the right to receive the interest or produce must be directly limited to the life of the legatee, for a general gift of such interest or produce without limitation would import a gift also of the principal sum, or of the stock, &c.

Mistakes in the description of legacies will be corrected by the Court of Chancery in the same manner as those in the names or descriptions of legatees. Mistakes arising from miscalculations are also corrected in the amount of legacies. For instance, if a father believing that his daughter were entitled to a certain sum under a marriage-settlement were to leave her a legacy, with a view of raising her fortune

to a given amount, and it afterwards turned out that, from a mistake as to the sum secured by the settlement, the legacy was insufficient for the purpose intended, the Court would increase the legacy to the required amount. But in order that a mistake of this sort may be put right, the intention of the testator must plainly appear *from the will itself*. No extraneous evidence is admissible.

CHAPTER VII.

OF LEGACIES.

THE leading distinction with reference to legacies is that between general and specific legacies. Thus, a testator may either leave a particular thing to a legatee, or he may leave him generally a certain amount of money or property. In the former case, the legacy is called "specific;" in the latter, "general." And the difference often becomes very important; for supposing the testator's estate is not sufficient to pay the whole of his debts and legacies, the general legacies will be proportionately abated in order to raise a sufficient sum to pay the debts, or in order to allow each legatee to receive an equal proportion of the legacy

left to him. But the specific legacies will be handed over to the legatees. On the other hand, if in the interval between the making of the will and the testator's death he has parted with the identical article which is the object of the specific legacy, the legacy is at an end, and the legatee will get nothing at all. It is, therefore, frequently a matter of great importance, as it is also one of considerable nicety, to determine to which class a legacy belongs.

As a general rule, if a legatee dies before a testator, or before he has performed any condition which may be attached to its receipt, the legacy "lapses"—that is, fails, and becomes part of the testator's residuary estate. This is so even if it were bequeathed to the legatee, his heirs, executors, and assigns. In order to prevent such a result, the testator may expressly direct that a legacy shall not lapse, but in that case he must name some person, or persons, to whom it is to go in substitution for the first legatee. It may be directed to go over to his heirs or executors, but in that case it must be left to "A. B., *or* (not *and*) his heirs or executors."

If, however, the legacy be left to a child or other descendant of the testator, it will not lapse, for by the 33rd section of the Wills Act, "when any person, being a child or other issue of the testator (to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable, with or before the death of such person), shall die in the lifetime of the testator leaving issue, and any such

issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intent is apparent on the face of the will." A legacy left by a parent to a child can therefore be bequeathed by that child, although he or she may die in the parent's lifetime, *i. e.* of course supposing that the legacy is not revoked by the parent.

There is another exception to the general rule on this subject. When a legacy is given to one man as trustee for another, the legacy will not lapse by the death of the trustee in the testator's lifetime.

If a legacy be given generally without any time for its payment being specified, it becomes *due* on the death of the testator, although it is not *payable* until a year has elapsed. Hence, if the legatee happen to die after the testator, but before the legacy is payable, it will pass to his personal representative,* or to the person to whom he may have bequeathed it.

A legacy may either be given absolutely, or the right of the legatee may be made dependent upon the happening of some contingency. It may readily be imagined that the distinction between the two classes of legacies often gives rise to considerable difficulty, and has caused no little litigation. We shall not here do more than refer to one point of great practical importance, which frequently arises with reference to

* *i. e.* his executor or administrator.

gifts of personal property to persons under age. In leaving such legacies, it is sometimes the intention of the testator that the object of his generosity shall have the property in the legacy immediately on his death, but that it shall not be paid over till the legatee is of full age: that object will be attained by saying that the legacy shall be "payable" or "be paid on the legatee attaining twenty-one." On the other hand, the testator may desire that the legatee shall not receive the legacy at all, unless he or she live to be of age. In that case, he must say that the legacy is to be given "*at* twenty-one," or "provided that the legatee attain twenty-one years of age." It must, however, be remarked, that if a bequest in these terms be accompanied by a provision that the interest of the fund is to be applied for the benefit of the legatee during minority, it will not prevent the legacy immediately becoming the property of the legatee, and passing, in case of death, to his or her personal representatives. If it is desired to combine the two objects of appropriating the interest to the maintenance of the legatee during minority, and of preventing the legacy itself becoming his or her property, unless he or she arrive at full age, the intention must be expressed in the clearest and most unambiguous language, when it will be carried out by the courts.

Legacies are sometimes left conditionally. Upon one class of conditions, that in reference to marriage, we may usefully offer one or two observations. If a

legacy be left to a person, coupled with a condition which either directly or indirectly would prevent the legatee from marrying, that condition would, as tending to immorality, be held invalid, and the legatee would retain the legacy without the obligation to observe the condition. But, on the other hand, conditions restraining the marriage of the legatee until twenty-one, or other reasonable age; prohibiting marriage with a limited number of persons; or forbidding it except with the consent of parents, guardians, trustees, &c., are perfectly valid, although even these are so far regarded unfavourably by the courts, that they will not be enforced except the testator has left the legacy to some one else, in case the first legatee does not observe the condition imposed upon his or her receipt of it. It may also be useful to add that if a legacy has been left conditionally, that the legatee do not marry without the consent of specified persons, and those persons refuse to consent, the Court of Chancery will direct an inquiry into the grounds of their refusal, and if those grounds appear insufficient, it will authorize the marriage, which, thus taking place under the sanction of a judicial tribunal, will not entail the forfeiture of the legacy.

Legacies are frequently left to executors. In such cases, unless the reverse can be shown, either from the language of the will, or from other circumstances of which evidence may be given—the presumption is, that the legacies were given to them *as* executors, and that

the testator did not intend that they should receive them, unless they acted in that capacity. Whether an executor has or has not acted, may often be a doubtful question. If, however, he have proved the will with the honest intention of acting under it, or if he have shown an intention to perform the duties of an executor by giving directions about the funeral of the testator, then, although he should be prevented by death from further discharging the duties of the office, he will be held to have entitled himself to the legacy, which will be payable to his personal representatives.

When the *same* sum in money, the *same* amount of stock, &c., is bequeathed to a legatee twice or oftener by the same instrument, such legatee is entitled to *one* legacy only. But when in the same instrument there are bequests of *unequal* sums or amounts, or when there are bequests either of equal or unequal sums in *different* instruments, the legatee will have a right to them all. That is, of course, unless the testator have in either case clearly indicated a contrary intention, for an unequivocal expression of his intention is in all cases paramount.

When a debtor bequeaths to his creditor a legacy equal to or exceeding the amount of his debt, it will, in most cases, be presumed, *in the absence of any expression of a contrary intention,* that the legacy was meant by the testator as a satisfaction of his debt. But no such presumption will be made in the case of a gift of a specific chattel; where the debt is not con-

tracted until after the making of the will; when the debt is on a current account; or when it is upon a bill of exchange. If a creditor leave a legacy to his debtor, that is not considered any evidence of his intention to remit the debt. And even if a testator does by his will expressly remit a sum owing, that will only be effectual in case he (the testator) leave other assets sufficient for the payment of his own debts. And when a legatee is indebted to the testator, the executor may retain the whole or any portion of the legacy, either in full or part satisfaction of the debt.

If a testator, who is under obligation by the articles of any marriage settlement to provide portions for his children, leave any of them a legacy, it will be presumed (in the absence of evidence of a contrary intention) that he intended the legacy in part or entire performance of his obligation, and the child will not receive both portion and legacy. On the other hand, if a father leaves a legacy to a child, and subsequently to the date of the will advances that child a portion, such advance will be considered as a satisfaction of the legacy either in the whole or part. To prevent this presumption being acted upon, if it is contrary to his intentions, a testator who wishes that a child should have both the legacy and portion, must declare such wish by a new will or codicil, dated subsequently to the advance of the portion.

CHAPTER VIII.

PRACTICAL HINTS ON THE FRAMING OF WILLS.

We should hardly discharge our duty in regard to this part of our subject, if we did not offer to persons about to make their wills such practical advice and such suggestions as are warranted by professional experience. The uncertainty which an intending testator often experiences as to his intentions, is one cause of those intentions being ill and loosely expressed, and of the litigation to which imperfectly-drawn wills so often give rise.

If the testator be a married man, the first point which will naturally occur to him is, the provision to be made for his widow. When there are children, it is, as a general rule, desirable to give the widow a life interest only in, (at any rate, the great bulk of) the property, leaving it to be divided amongst the children at her death, in such a manner as the testator may wish.

If, indeed, the property be sufficient to allow it, there is an advantage in leaving a portion of it to the widow absolutely—for there is no doubt the fact that they are to some extent dependent upon her bounty tends to maintain that influence and authority which she ought to possess in respect to her children. It is not unusual to insert in the will a proviso that the interest of the widow in the property shall cease, in the

event of her marrying again. Upon the expediency of such a proviso, it is almost impossible to offer any general advice. A testator must be guided by his opinion of the character of his wife, by the age and position of his children, and by the view which he may take upon the advantages or disadvantages to them of a second marriage. But there is nothing illegal in the insertion of such a proviso in a will.

With regard to the provision to be made for children several cases might arise. The simplest is that in which a sole surviving parent—widow or widower—wishes to leave his or her property to adult children. In that case, of course he or she has nothing but to leave it directly to them in such shares as may be deemed fitting. If, however, the conduct of any of the sons has afforded strong reason to believe that they are likely to lead vicious, extravagant, reckless lives, and to dissipate speedily any money of which they may get hold, it is earnestly recommended that provision should be made for them by vesting in the hands of trustees a sum sufficient for the payment of a weekly or monthly allowance. This will at any rate diminish as much as possible the disastrous effects of their evil habits. If the daughters are married, a serious question often arises. It frequently happens that they are married to men in whom the testator has had reason to repose the most perfect confidence, and who are engaged in some business or trade which is susceptible of considerable but perfectly safe extension by the introduction of some additional capital. In such circumstances the

greatest benefit may be conferred upon the daughter by leaving the property directly to her, so that it may be invested in her husband's business. No doubt it will, technically speaking, immediately become his; but that will, of course, not be a matter of much importance in the case we are putting. This course ought, however, only to be taken in the exact circumstances we have described. If there is the least reason to doubt the character or the affection of the husband; if indeed it has not been tested so as to place it beyond reasonable doubt; if the money is considerable in amount, and cannot be embarked in some settled and established business where it will be exposed to little risk, it is far better to settle it upon the daughter in such a way as to take its control entirely out of the hands of the husband. This is generally done by leaving her share to trustees to hold for her sole and separate use during her life. After her death it may either be directed that the property should be divided equally amongst her children, or should go to such of them as she might designate by her will, or (leaving her still more power over it) that she should have the power of willing it to whomsoever she pleased. It is not, however, as a general rule, desirable to give her the last-mentioned power, because its possession exposes her to the solicitations and the influence of a husband who may desire to have the power exercised in his favour, and may not be very particular how he attains his object. If the daughters are unmarried, the property left to them should always be settled upon them, if it is of any considerable

amount, as it is of course utterly impossible to anticipate the description of matrimonial connection which they may form.

If the testator be providing for his widow and for children who are not yet of age, the will involves considerations of a rather more complicated description. The first thing will here be to consider whether he wishes the children to come into possession of any part of his property during their mother's lifetime. In case it is intended that they should, it is usual to provide that the sons' portions should be payable to them on the attainment of their majority; while the daughters' should be payable on the attainment of their majority or when they marry. In both cases it is desirable that the portions of the children should be vested in trustees until they are so payable, and that power should be given to such trustees to apply the interest of a child's portion to defray the expenses of its maintenance during minority, or even to advance a portion of his or her share for the purpose of apprenticeship to a trade or profession. In such a case, the best way is to constitute the executors trustees of the will; vesting the whole of the estate in them until the time for distribution arrives, and conferring upon them such powers of investment and general management as will enable them to discharge their duties most advantageously. In the Appendix will be found several forms framed upon this plan, and investing the executors and trustees with the powers which experience has shown to be desirable.

If the testator intends that the children shall take

no interest in his property during the lifetime of his widow, it may often be a matter very well worth considering, whether, while directing that it shall eventually be divided amongst them, he will not leave to his widow the power of directing by her will the precise shares which they shall take. It is perfectly clear that in the course of her life circumstances might happen which, by altering the relative position of the children, might render it exceedingly desirable and obviously just that more should be left to one and less to another. And if the testator think fit to repose this confidence in his widow, it will be advisable to go one step further, and allow her to divide the property amongst the children of the testator or the issue of those children. The advantages of this are obvious. A child may have turned out profligate, may have become insane, or have been insolvent. In the last case his share, if paid over to him, would become the property of his assignees; in the two former it would obviously be much better that his family should have the administration of the property.

This is perhaps the proper place to refer to a contingency which may happen—that of the testator wishing to provide for illegitimate children. It will not do for him in that case to leave his property amongst his "children," for, even had he no legitimate "children," the courts would not hold the illegitimate offspring to be included under that term. When they have acquired names by registration or reputation, the best way is to leave the property to them in

those names. And as under the present laws with respect to the registration of births all children must be registered within a few days after their birth, that practically disposes of the case of all natural children in existence at the time of the testator's making his will. But the testator may wish to make provision for children yet unborn. In that case a bequest to a child of whom a certain woman (naming her) is pregnant, will certainly be perfectly valid *so long as nothing is said about the paternity*, of which the law takes no cognizance. It is very doubtful whether the law allows illegitimate children not *en ventre sa mère* * at the time of the will to be provided for at all. If it can be done at all, the bequest must be made to them or the natural children of a certain woman. But a testator ought not to run any risk on this point, when it may be easily avoided by the execution, on the birth of each child, of a codicil extending to it the advantage of any provision which the testator may have made for previously-born offspring of this class.

There are very few instances where there is the slightest probability of a testator's widow marrying again, and he is desirous that the business should be carried on till some one of his children is capable of undertaking it, that it would not be prudent to restrict the wife's management of the business to her widowhood, for by a second marriage the whole concern may be deteriorated or ruined outright by the interference and ill-management of the after-taken husband.

* *i. e.* of which the mother is actually *enceinte*.

Wherever it is intended that the testator's trade shall be carried on for the benefit of his family, or for any other purpose, there should always be an express power in the will for that purpose, otherwise neither his trustees nor executors will be authorized in so doing, however advantageous such a course may seem. It will also be necessary to confer ample authority upon the trustees, &c., to compound debts, and so otherwise to arrange the conduct of the business, that the executors or trustees may be released from all responsibility with respect to losses caused by giving time in payment, or taking insufficient securities from debtors, paying debts in the absence of strict legal proof of their having been contracted, or any other damage resulting from any act which a person by the absolute control of a business may incur in the conduct of it, or for any loss whatever, unless the same is occasioned by the actual misconduct of the trustees. They should also be empowered to increase, diminish, or discontinue the business altogether, if likely to prove a losing concern; for if the business is to be carried on, at all events, until some certain stated period, considerable losses may be incurred, as a business at the time exceedingly lucrative may, from some unforeseen events or untoward circumstances, become a very unprofitable affair.

We have only a few words to add with respect to the best manner of disposing of various kinds of property. Household goods, furniture, and other personal property, may be given to one person for life, and then absolutely to another. But it is better not to do this,

unless there is some strong reason which renders it desirable, as nothing is more likely than that differences will arise between the first and ultimate taker as to the custody and use of the articles so bequeathed. In case, however, the testator determines to make such a bequest, he is advised as a general rule to direct that the person who takes the goods first shall give security to keep them in good order and condition—reasonable wear and tear only excepted.

Where there is no reason for bequeathing personal property in its existing state, the better way, when it is desired to give it for life to one person, and then over to another, is to direct it to be sold, the proceeds to be invested, the interest to be paid during his life to the first taker, and the principal handed over on his death to the second. It is especially desirable to take this course when any part of the property consists either of leasehold or of reversionary interests. For, as the first are daily deteriorating, and the latter daily increasing in value, it is clear that if they remained in an unconverted state, the tenant for life in the first case, or the person entitled in remainder, in the second, would otherwise derive an unfair advantage.

If a testator wishes his landed property to be enjoyed by his children generally, he should not leave it to them jointly. This almost always leads to family differences. It is much better to leave it to trustees, with directions to sell it, and divide the proceeds amongst the persons intended to be benefited.

If real property is left to an infant, the testator

ought always to vest in trustees ample powers to manage it, and to make what improvements or repairs may be necessary.

If the duties devolving upon executors or trustees are likely to be of an arduous character, the testator would be well advised to leave them a legacy as compensation for their services. That will obviate the danger of their declining to act; for unless they do they will not be permitted to receive the gift.

PART II.

CHAPTER IX.

THE APPOINTMENT OF EXECUTORS.

An executor is said to be "one to whom another commits by will the execution of his last will and testament." Any person who can make a valid will may act as the executor of one; and, moreover, certain bodies or persons who cannot make wills may execute them. For instance, it is said that a corporation may be an executor. But it is practically more important to remark that a firm may be thus appointed, and that in that case the appointment will be construed to apply to the individuals who composed it at the time the will was made. An alien is not disqualified from acting as an executor; and an infant may be appointed, although he cannot act until he attains the age of 21. If there be no other executor appointed, probate of the will may in the meantime be taken out by his guardian, or by such other person as the Probate Court shall appoint, who shall act in the administration of the estate for the infant executor until he attains his majority. A wife

may be appointed an executrix, but she cannot act as such without the consent of her husband, who on the other hand cannot compel her to accept the office against her inclination. Attainted felons and outlaws may even be executors; and so may insolvents and bankrupts, but then the Court of Chancery will interfere to restrain the two latter classes of persons from acting, and appoint a receiver to administer the estate, unless there is reason to believe that at the time of making the will the testator knew that the persons he appointed were insolvent or bankrupt, and deliberately thought fit to entrust the administration of his estate to persons of such description. Idiots and lunatics are, of course, incapable of acting, and therefore, on proof being given that an executor is labouring under this disability, an administrator will be appointed by the proper court to act in his stead.

An executor or executors must be appointed by a will or codicil; and there is no limit to the number of persons to whom the testator may thus entrust the administration of his estate, and the execution of his last wishes. Of course, the appointment ought always to be made in direct and explicit terms, but a man may be impliedly appointed executor by any words in a will which show that the testator intended that to him should be committed, after his death, the administration and disposition of his estate, and the payment of his debts. It is sometimes desirable—when a testator has had no opportunity of ascertaining whether the persons upon whom he wishes to confer the office will serve—

to appoint executors in the alternative: *i. e.* "A. B. and C. D. if they will act, and if not E. F. and G. H.," and it is perfectly legal to do this.

We shall have occasion in a future chapter to speak more particularly of the powers and duties of an executor; but it may be useful to remark here, that although, if executors are simply appointed without anything more being said, the whole personal estate of the testator vests in them, and they have absolute power over its administration, until that is completely effected, yet a testator may appoint an executor for a fixed time—as, for instance, during the minority of his son—and the power of the executor will cease at the expiration of the period named; or the testator may appoint an executor to attend exclusively to the administration of a particular class of his property, or to a particular portion of it situated in a specified locality. Unless, however, under very peculiar circumstances, it is not expedient to complicate and embarrass the administration of an estate by dividing it amongst different persons.

Although the estate of the testator is said to be vested in the executor, the latter cannot assign or transfer his executorship to another during his life; but a sole executor, or the last survivor of several executors, may (if he has proved the will by which he was named) by his will appoint his own executor to act in the same capacity with respect to the will of the first testator, and the second executor thus appointed will have, in all respects, the same rights and powers as the

first in the administration of the original will. If, however, an executor die intestate, and a person is appointed by the court to administer his estate, such "administrator," * as he is called, will not represent the deceased in his executoral capacity, but an administrator will have to be appointed by the court to carry out the original will. Although a married woman cannot in general make a will, yet she may do so for the single purpose of appointing an executor to a will of which she may be executrix.

We have said that an executor may be appointed either by express words in a will, or by necessary implication from its contents. There is, however, another mode in which a person may become an executor, so far, at least, as the liabilities of the office go. If anyone who is not duly appointed executor or administrator intermeddles with the property of a deceased person, or takes upon himself to discharge any of the duties which properly belongs to an executor or administrator, he becomes what in the language of the law is termed an executor *de son tort* (*i. e.* an executor in consequence of such wrongful conduct), and, as the reward for his officiousness, is immediately invested with all the responsibility and liabilities of an executor, without enjoying the privileges possessed by one legitimately entitled. For instance, he becomes at once liable to be sued by a creditor or legatee of the testator for his debt or legacy; and although he will be

* See Chap. XI.

protected by the court in doing all acts which he has done in the *bonâ fide* administration of the estate, and *which a legally-appointed executor might have done,* he will not be able, like the latter (if a creditor), to pay himself his own debts out of the testator's estate. And as an executor cannot sue himself, a creditor of a deceased person meddling with his estate, so as to constitute himself executor *de son tort,* forfeits all claim upon the estate so long as he continues to act as executor; and as he will, probably, find it very difficult to get rid of the self-imposed office in cases of intestacy, or when the deceased has died in pecuniary difficulties, the practical result of his conduct would in such a case be that he would have to discharge very laborious and vexatious duties, and would lose the whole of his debt. It is clear, therefore, that it behoves everyone to be exceedingly cautious not to interfere with the property of a deceased person. It is exceedingly difficult to say what amount of interference will render a man an executor *de son tort;* but it is established that there are certain things which anyone may do without incurring this liability, and it will be prudent to keep strictly within the limits thus laid down by the courts. A stranger may, without risk, look after the goods of the deceased with a view to their preservation; may order a funeral in a manner suitable to the rank in life and the property of the deceased, either defraying the expense thereof himself, or doing so out of the testator's estate; may make an inventory

of the property with a view to prevent its abstraction; feed his cattle, or provide necessaries for his children.

A person appointed executor is not obliged to serve the office, but he may be compelled by the Court of Probate to declare within a reasonable time whether he will or will not, and this option ceases if he once takes upon himself the administration of the estate, for in that case he *must* prove the will, and continue to act as executor, unless the court accepts his resignation and appoints another person to act as administrator—a course which it is very difficult to induce it to take. Any acts which would make a stranger an executor *de son tort* will amount to such an administration on the part of a person appointed executor as will deprive him of the freedom to renounce the office.

In order to be binding, the renunciation of the office of executor must be recorded in the Court of Probate. Even this formal act, however, may be retracted at any time before the grant of letters of administration. Nay more, should there be several executors, and some renounce while others act, then should the last survivor of the acting executors die without making his will and appointing an executor, those who formerly renounced the executorship of the original will will have another opportunity of retracting their renunciation, and taking upon themselves the office which they previously declined.

CHAPTER X.

OF PROBATE.

IMMEDIATELY upon the death of the testator, the personal property of which he died possessed passes to his executors, to be distributed, after the payment of his funeral expenses and debts, in the manner directed by the will. The *real* property of the testator does not vest at all in the executors, but passes immediately to the persons to whom it is bequeathed, or in more technical language *devised,* subject, however, to the payment of the testator's debts, should the personal property which he has left behind prove insufficient for that purpose. The duties and responsibilities of the executors, therefore, refer only to the personal property of the deceased, as will be more fully shown in another place.* Immediately upon the testator's death, the executor or executors may take possession of his personal property, they may provide for his interment, they may pay or receive debts due from or to him, and if they once administer to the estate they become liable to be sued in the same manner as he might have been if he had been living. They may even *commence* actions on behalf of the estate, although they cannot maintain them beyond the point at which it becomes necessary in the course of legal proceedings to prove the validity

* See Chap. XIII.

of the will, and their right to act as executors under it by taking out what is called *probate* of the will. To do this the executor or executors must *prove* the will before the proper officer of the Court of Probate; —*i. e.* they must show in the mode appointed by law that the will is really the duly-executed will of the testator, and that they are the executors appointed under it. On doing so the original will is deposited in one of the registries of the court, and they obtain a copy of it certified by the seal of the Court of Probate, which is the only evidence of the will that the law allows to be received in any court of justice upon any question affecting the personalty of the deceased.

It is clear that it would in many cases, perhaps in most, become necessary for the executors to take this step at a very early day, but the law—having regard to the importance of not allowing persons to act under wills whose validity has not been proved to a competent authority—has limited the time within which probate *must* be taken out. The statute 55 Geo. III. c. 184, sec. 37, enacts "that if any person shall take possession of and in any manner administer any part of the personal estate and effects of any person deceased without obtaining probate or letters of administration of the estate and effects of the deceased within six calendar months after his or her decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the

death of the deceased, every person so offending shall forfeit the sum of 100*l.*, and also a further sum at and after the rate of 10*l.* per cent. on the amount of the stamp duty, payable on the probate of the will or letters of administration of the estate and effects of the deceased." It is desirable to take steps to prove a will even earlier, for under the rules of the new Probate Court "no probate or letters of administration, with the will annexed, shall issue after the lapse of seven days from the death of the deceased, unless under the direction of the judge." Of course a reference to the judge of a matter which, in ordinary cases, is disposed of, as we shall see, by a register, is attended with some additional delay and expense.

Premising that a will disposing solely of real property * need not be proved, we proceed to inquire—

Where a will must be proved.—Under the Probate Act, 20 and 21 Vict. c. 77 (passed in 1857), a Court of Probate was established in lieu of the old ecclesiastical courts. It holds its sittings in Westminster Hall. To that court is attached a principal registry of wills (presided over by a principal registrar), the building used for the purpose being the former registry of the Prerogative Court of Canterbury, 6, Great Knightrider Street (Doctors' Commons). But in addition to this, there are for England and Wales forty district registries, the localities of which, and the dis-

* That is, of freehold or copyhold land, for leaseholds are personalty.

tricts attached to them, are given in the Appendix.* Each district registry is presided over by a district registrar.

If the testator at the time of his death resided permanently in any one of the forty districts to which we have referred, then probate of the will, in what is called *common* form,† may be obtained at the registry of that district; and such probate or letters of administration will have effect over all the personal estate of the deceased, in whatever part of England or Wales it may be situated. The executors may, however, in any case prove the will at the principal registry in London. They had better do so if any real doubt exists as to the permanent residence of the testator at the time of his death; and they must do so if he resided abroad, or in any part of England or Wales not included in the forty districts which, as it will be seen, do not embrace the metropolis, and several of the counties in its neighbourhood. The fact of the deceased having, at the time of his death, had a permanent abode within the district at the registry of which probate is applied for, must be proved by the affidavit of some or one of the persons applying for probate. And the district registrar, before he entertains any application for probate or administration, is directed to ascertain that the deceased had, at the time of his death, a fixed place of abode within his district; and in no case to allow probate or letters of administration to issue until all inquiries, which he may see fit to insti-

* See Appendix, p. 190. † See p. 78.

tute, have been answered to his satisfaction. When, however, a grant of probate shall have been once made by a district registrar, it will not afterwards be liable to impeachment or revocation on the ground that the deceased did not, in fact, reside within the district. Of course, however, persons making false affidavits with respect to the testator's residence, would be liable to the penalties of perjury.

One important point remains. An executor may prove the will of his testator at a district registry without the intervention of a professional man. But an application for probate at the principal registry must be made through a proctor, attorney or solicitor. We furnish in the Appendix directions and the necessary forms to enable an executor himself to prove the testator's will without the assistance of an attorney. This should never be done where the property is large, or the affairs of the deceased are at all complicated; but where the case is otherwise, economy may often be safely consulted by the executor taking upon himself the proof of the will.

Who should prove the Will.—If executors be appointed under a will no one can prove it until they have renounced;* their renunciation being in the form appointed in the Probate Act, and entered and recorded in the Court. If the executors do not either prove the will or renounce within a reasonable time, any person interested under it may compel them by process of the law to take one course or the other.

* See Chap. IX.

And if the executors have not the will in their possession, they may invoke the aid of the Probate Court to enforce its production by any person in whose custody it may happen to be. And as wills are frequently deposited with solicitors, it is important to observe that the *lien* which, as a general rule, they have for the amount of their unpaid bills upon the papers of their clients, *does not extend to an* original will; and that, therefore, however much a testator may die indebted to his solicitor, the executors, without payment of his claim, may compel him to produce such will if he have it in his possession.

Where there are two or more executors probate will be granted to any one of them who "propounds" the will (as its formal production to the registrar is styled). But the others may afterwards come in and prove it also if they like. It is, however, wholly unnecessary for them to do so, as a probate granted to one of several executors enables all to act upon it, whether they have or have not taken part in the proof.

How the Will is to be proved.—A will may be proved either in what is called common form or by form of law, which is also called proving in solemn form, or by witnesses.

A will is proved in common form when it is proved by the executor in the absence of the parties interested. It is said to be proved in solemn form when parties interested, such as the widow and next of kin, who might be entitled to the testator's property if he had

died intestate, are summoned to attend to witness the proof and oppose it if they see ground for disputing the validity of the will. Now an executor may either be compelled to prove the will in the latter manner by the parties interested, or he may do so voluntarily. For when once a will has been proved in solemn form it can never afterwards be set aside, but if it be merely proved in common form, the executor may, at any time within thirty years from its execution, be called upon by parties interested to prove it in solemn form. If, therefore, an executor has any serious doubts whether a will may not be invalid, either from the insanity of the testator, or some other cause, it is advisable that, for his own protection, and to save himself future embarrassment, he should prove the will in solemn form. Where there is no such doubt, which is the case in ninety-nine cases out of a hundred, it is sufficient to prove the will in common form. As this may be done at a district registry, (if the will is provable there,*) by the executor in person, without the intervention of a professional man, we shall describe somewhat minutely the mode of proving a will in "common form."

The executor must take the will to the district registrar, who, on receiving the application, will communicate by the next post, to the principal registry, a notice of the fact. If no application for probate has been made at the principal registry by any other person, or if no notice of opposition to the proof of the will has been deposited by any parties interested,

* See *ante*, p. 76.

the principal registrar will forward a cert
these facts to the district registrar, who may
not until then, grant probate of the will.

If the will have a proper attestation claus
forth distinctly that the rules laid down by
Act for the execution of wills have been duly
with, the registrar will grant probate on th
the executor or executors that the document
is the will of the testator.* But if ther
attestation clause to a will presented for prob
the attestation clause be insufficient, the regis
require an affidavit from at least one of the su
witnesses to prove that the provisions of the
were in fact complied with. If both the su
witnesses are dead, or from other circumst
affidavit can be obtained from either of the
must be had to other persons, if any, who
been present at the execution of the will; b
affidavit of such other person can be obtained
to probate, evidence or affidavit must be pro
that fact and of the handwriting of the su
witnesses, and also of any circumstances wh
raise a presumption in favour of the due exec
the will. We need not, however, enlarge fu
this point, for it is clear that unless the will
regular attestation clause it will be perfectly
for an executor to attempt its proof witho
assistance.

If the registrar be satisfied of the genuine

* For form of attestation clause, see p. 146.

the will, he will grant probate, *i. e.* he will give the executor a copy of the will, having annexed to it a certificate that the original document is duly proved to be the will of the testator. The original will is delivered up to the registrar to be kept by him.

At the time that the executor applies for probate, he must also make an affidavit to be forwarded to the Commissioners of Inland Revenue as to the amount of personal property of which the deceased died possessed.*

It would be useless here to attempt even an outline of the proceedings upon proving a will in solemn form, for the assistance of a professional man must necessarily be invoked. It will be sufficient to state, that when the testator had at the time of his death a fixed abode in one of the country districts, and his personal property, not including property held in trust, and without deducting debts, is under the value of 200*l.*—while he is not at the time of his death lawfully entitled to real estate to the value of 300*l.*—then the will may be proved in solemn form before the County Court, when all questions with respect to its validity may be heard and determined. Even, however, where the property of the deceased is thus limited in amount, the executor may resort to the Central Court of Probate, and he must do so if the testator's property exceed these limits, or if he had not a fixed residence in one of the country districts.

We have said that parties interested in a will may

* For form, see Appendix.

compel the executors to prove it in solemn form, and thus to give them an opportunity of contesting its validity. This may be done, as we have already seen, after the will has been proved in common form.

Proof of the will in the latter mode may also be *prevented* by the entry of what is called a *caveat*, either at the principal registry in London, or at the registry of the country district in which the deceased resided. This caveat is merely a notice to the registrar, signed by the proctor or attorney of a party interested, that no proof of the will of the testator named in the notice is to be permitted without notice to him. A *caveat* remains in force for six months, but may then be renewed. Should the will be brought in for probate while a *caveat* is in force, the registrar will immediately give notice to the opposing party to attend on a certain day and prove his interest in the will. If he do not then put in an appearance, there is an end of the opposition, and the will may be proved in common form; but if he does appear, that constitutes the commencement of a suit for determining the validity of a will, which must then be proved in solemn form.

The only question that remains is as to the parties who may oppose the proof of a will. The next of kin and the widow may always do so; for if the testator died intestate his property would come to them. Any of these may contest the validity of a will, even although he or she may actually have received a legacy under it, but in that case the amount of the legacy must be paid into court. A next of kin calling upon

an executor to prove a will in solemn form, is not ordinarily liable to the payment of costs, although the decree of the court may ultimately be in favour of the will. But he may be made liable if the proceedings be manifestly groundless and vexatious, or if they have been taken after a long acquiescence in the will, which is not accounted for by special circumstances.

A creditor who has taken out letters of administration to the estate of a deceased person may oppose the proof of a will subsequently brought in by an executor.

The executor or legatee of one will may oppose the proof of another.

Probate of a will may be revoked—1st, if a will having been proved in common form, the executor subsequently fails, when called upon, to prove it in solemn form; 2nd, if the probate have been obtained by fraud; and 3rd, on the production of a later will.

If the deceased, at the time of his death, had a fixed residence in one of the country districts, and his personal property (deducting debts, but exclusive of any of which he is only a trustee) is under the value of 200*l.*, and his real property (if any) is under the value of 300*l.*, the County Court of the district in which the deceased resided may revoke the probate. In other cases, application must be made to the Court of Probate in London.

By section 77 of the late Act, however, all payments *bonâ fide* made to any executor under or before the revocation of the probate under which he acted, will be

a good discharge of the person who has made them; and the executor will be entitled, before handing over the estate to his successor, to reimburse himself for any lawful payments which he has made.

CHAPTER XI.

OF LETTERS OF ADMINISTRATION.

If a person dies without leaving a will he is said to die intestate. In that case, so much of his personal estate as is requisite for the payment of his debts is thus applied, while the remainder is distributed amongst his widow and next of kin, in the manner which we shall hereafter point out. It is, of course, clear that some one must undertake the duty of getting in the estate of the deceased, settling the claims upon it, and dividing the surplus—must, in fact, do very much what an executor would under a will. Now, no person can undertake this office—that of an "administrator," as it is called—until he has been regularly appointed under the authority vested in the Probate Court by the recent Act. Indeed, a heavy penalty is imposed by the Stamp Act upon persons taking possession of or administering the effects of deceased persons, without obtaining letters of administration within six calendar months from the

deceased's death, or in case there be a suit as to the right of administration, not ended within four calendar months of the death, then within two calendar months from the termination of the suit.

The first point to consider is,—the person who is entitled to take out letters of administration.

A husband has an exclusive right to administer to the estate of his deceased wife; while a widow will, in most cases, be granted the administration of the estate of her deceased husband, in preference to any of his next of kin. Her claim may indeed be set aside, if it can be shown that under her marriage settlement she is deprived of all interest in her husband's property, if she is a lunatic, or if she has eloped from her husband and lived in adultery. The circumstance of her having married again is not in itself a decisive objection, although if it were urged by *the whole* of the children of the first marriage, it is most probable that the court would listen to it, and grant administration to one of them.

If the deceased have not left a widow, then administration is usually granted to the next of kin who is willing to accept it. Now, in determining this question—who is next of kin?—it must be recollected that females are equally entitled with males, and that half-blood relations of the deceased are entitled, as well as those of the whole blood, to claim administration. The children of the deceased have the first claim to administration, then his lineal descendants (*i. e.* grandchildren, great-grandchildren, &c., to the remotest degree), and

after them his parents; then follow in succession the brothers and sisters, the grandfathers and grandmothers; the uncles, aunts, nephews and nieces of the deceased; his great grandfathers and grandmothers; and lastly, his cousins.

When there are several persons equally near of kin to the deceased, the court grants administration to the person desired by the majority of those who have a right to have the estate of the intestate distributed amongst them; a whole-blood relation, however, being generally preferred to a half-blood relation of the same degree, a male to a female, and an elder to a younger son. But the court is not bound by these rules, if it be shown that a person who would ordinarily be entitled to appointment is unfit for the office, or that amongst those standing in the same degree of relationship to the deceased, one is from his business habits and knowledge preferable to another.

If a bastard die intestate, without wife or child, the Crown is entitled to his goods, subject to the payment of his debts, and in most cases a nominee of the Crown is appointed executor. Indeed, by one of the rules of the New Court, no letters of administration to the goods of such a person, or of a person dying without known relatives, are to be granted, until notice has been given to the proper law officers of the Crown, in order that they may decide whether they will interfere.

If the next of kin do not take out letters of administration to the estate of an intestate, any creditor of

the deceased may cite them to appear in the Probate Court, and then either accept or refuse the office. If they do not appear, or if when they appear they refuse, it is then usual to grant letters of administration to one of the creditors, for until an administrator is appointed their debts cannot be paid. When a creditor has once been appointed administrator, he cannot be displaced during his life by the next of kin. But if, on his death, the estate is not fully administered to (*i. e.* if the debts due to and from it are not paid, and the surplus distributed amongst those who have a right to it), the next of kin may then come in and obtain letters of administration to that which still remains to be dealt with.

If neither the next of kin nor the creditors of the deceased are willing to take out administration, it may be granted to any person at the discretion of the court.

A married woman may be an administratrix, but the consent of her husband is necessary, as she cannot herself enter into the administration bond (as to which see *post*, p. 88). It is said, however, that if the husband be abroad or incompetent, a stranger may be joined in the bond in his stead. A woman judicially separated from her husband can also act as an administratrix, without his consent.

We now come to the question—

How to obtain Administration.—If the intestate had at the time of his death a fixed residence within any one of the country districts, application for letters of

administration may be made, at the pleasure of the applicant, either at the district registry or at the principal registry in London. If he had not such a fixed residence, then application must be made at the principal registry.

The person applying will have to satisfy the district registrar that the deceased had a fixed residence within his district, and, moreover, that he (the applicant) is the next of kin; or that if there are others as near or nearer of kin to the deceased than himself, that they have had notice of his application, and do not oppose it; or if it is a creditor who applies, that the next of kin do not intend to apply for the grant of letters of administration. No letters of administration can issue until after the lapse of fourteen clear days rom the death of the deceased, unless under the direction of the judge. But after the expiration of that time (or sooner if the judge directs), the registrar—if satisfied by the oath of the applicant, or by affidavits and declarations on oath that the applicant has a right to administration, and that his claim is made after notice to the parties entitled to oppose—will grant letters of administration, which forthwith confer upon the administrator rights and powers similar to those possessed by an executor over the estate and effects of the deceased; subject, however, to the duty of distributing them in the manner we shall hereafter point out.

By the 81st section of the Probate Act, every person to whom administration is granted shall give bond to the judge of the Court of Probate, and, if the court or

district registrar require, with one or more surety or sureties, conditioned for duly collecting, getting in and administering the personal estate of the deceased. The registrars are directed by the rules of the court to take care (as far as possible) that the sureties to administration bonds are responsible persons; and the sureties are bound to declare on oath that they are worth the sum in which they are bound, after payment of all their just debts.

And by section 83 of the same Act, it is provided that the court may, on application or motion, or petition in a summary way, and on being satisfied that the condition of the bond has been broken, order one of the registrars of the court to assign the same to some person to be named in the order; and such person, his executors or administrators, shall be entitled to sue upon the bond in his own name at law and in equity, and to recover thereon as trustees for all persons interested.

An application for the grant of letters of administration may be opposed in the same way as the probate of a will. A *caveat* against a grant may be lodged with the registrar in the same way, and will have the same force. The subsequent steps in the suit are also similar, but it is unnecessary to allude to them further in a work of this kind, as it is clear that no steps can be safely taken either to oppose the grant of letters of administration, or to obtain them when contested, except under legal advice.

We have hitherto spoken of the grant of letters of

administration when the deceased has died intestate. But it is also frequently necessary to grant letters of administration when a will has been made. We shall refer briefly to the principal cases in which this exigency arises.

Administratio cum Testamento annexo (i. e. *Administration with the Will annexed*). —It sometimes happens that a testator makes a will, and either appoints no executors; or the appointment fails from the persons who are appointed executors refusing to act, from their dying before the testator, or before they have proved the will, or dying intestate before they have administered under it, or from their being at the time of the death of the testator under some legal incapacity to act as executors. The court then appoints some one to administer the estate in conformity with the will, and this person is said to be the administrator with the will annexed. Letters of administration of this description are obtained in the same manner as in the case of intestacy. But the person who has a right to be appointed administrator is not always the same.

If the executors appointed by a will refuse to prove it, administration, *cum testamento annexo*, will be granted to the widow, next of kin, or a creditor, as we have already explained. But when the testator has not appointed any executor at all, or when an executor has died intestate, leaving the work of administration unfinished, the court will consider which of the claimants to administration has the greatest interest in the estate of the testator. Now, it is perfectly clear that the person

who has the greatest possible interest in the estate being made to produce as much as possible, is the residuary legatee;* and therefore in the cases to which we are now referring, the residuary legatee is considered to have a prior claim even to the next of kin. If, however, there be no residuary legatee, the person first entitled is the next of kin; and if he declines, administration may then be granted to a legatee or a creditor.

Administratio de bonis non.†—If a testator have appointed only one executor to his will, and that executor dies without having administered to the whole of the estate, and without having himself appointed an executor, or if two or more executors have been appointed, and the last surviving executor dies, leaving the estate in a similar position, it is obviously necessary that some provision should be made for the administration of the remainder of the estate. In order to effect this, the Court of Probate grants letters of administration (in the same way as if the testator had died intestate) in reference to such remaining portion of the estate. Of course, however, the administrator thus appointed will also be an administrator "with the will annexed," and will be bound to carry out the directions of that instrument. As an admi-

* The residuary legatee is the person to whom is left what remains of a testator's estate, after his debts have been discharged and the whole of the legacies paid.

† Administration *de bonis non* (*administratis*), *i. e.* administration of the goods or estate not administered.

nistrator, unlike an executor, cannot transmit by his will the representation of the deceased testator, it is clear that an administrator *de bonis non* must also be appointed by the court in case of the death of the administrator first appointed, leaving the estate still undistributed.

*Administratio durante minore ætate.**—When a person appointed sole executor is under age at the death of the testator, or when the next of kin or other person entitled to the administration of the effects of the intestate is under age, administration is granted to some person *during the minority* of such executor, or of the person so entitled to administration. The Court of Probate has full discretion in the appointment of an executor of this description, but it is usual to appoint the guardian of the minor.

Administratio pendente lite.†— Pending any suit with respect to the validity of the will of a deceased person, or with reference to any contested right of probate or of administration to such will, the Court of Probate is authorized by the late Act to appoint an administrator of the estate of the deceased. The person so appointed has the same rights and powers as a general administrator, but he acts under immediate control and direction of the court.

Administratio durante absentiâ.‡ — If an executor appointed by a will, or the next of kin in case of in-

* Administration during a minority.
† Administration pending suit.
‡ Administration during absence.

testacy, be absent beyond sea at the time of the testator's death, the Court of Probate may, if the circumstances require it, grant to some fit person the administration of the estate during the absence of the executor or of the next of kin, who, on their return, will be entitled to have these letters of administration revoked, and to act as executor or administrator respectively.

Letters of administration may be revoked by the Court of Probate or by the County Court of the district * in which the deceased resided, if they have been obtained by false representation or by surprise, if administration has in the first instance been granted to a wrong person, or if the administrator appointed has since become incapable of acting.

Payments made to and by an administrator whose letters are revoked, are, however, protected in the same manner as those made to and by an executor in case of the revocation of a probate.†

CHAPTER XII.

TO WHAT PROPERTY OF THE DECEASED AN EXECUTOR OR ADMINISTRATOR IS ENTITLED.

THE interest of an executor in the estate of the testator is derived exclusively from the will, and dates

* The circumstances which give the County Court jurisdiction are the same as those which give it jurisdiction in the revocation of probate. See *ante*, p. 83.

† See *ante*, p. 83.

from the date of the testator's decease. On the other hand, the administrator takes entirely by virtue of the letters of administration; although if any person has injured or misappropriated any portion of the testator's estate in the period between his death and the grant of letters of administration, the administrator when appointed may bring an action and recover damages for the injury. When once, however, letters of administration have been granted, the administrator has the same property as an executor in the personal estate of the testator; and we may deal with them together in explaining of what that personal estate is composed, and over what portions of the property of the deceased the executor or administrator has jurisdiction, and how far he is charged with the responsibility of distributing it in payment of the testator's debts, and according to the directions of his will.

Immediately on the death of the testator, or on the grant of letters of administration, the whole of his personal estate becomes the property of the executor. It is his duty, as we have said, to distribute it amongst the legatees after payment of the debts; but although they can compel the executor or administrator to fulfil his duty by invoking the aid of the Court of Chancery, even specific articles which have been bequeathed to them do not become theirs until the executor has either actually handed them over, or signified that he holds them at their disposal, and on their behalf.

With the testator's real property the executors have nothing to do, unless it be devised to them, as is frequently done, for conversion into money, for the pay-

ment of debts or legacies. It passes to the heir or the devisees (that is, the persons to whom it is devised). It may be remarked, however, that should the personal estate prove insufficient to pay the testator's debts, the Court of Chancery will make the real property available for the purpose, whether it has been inherited by the heir, or passed under the will to a devisee.

When we speak of "real property," we mean freehold or copyhold lands and houses. For the testator's leaseholds, and the right to occupy any land or houses which he held on a yearly tenancy, and to retain them until proper notice has been given by the landlord, pass to the executors or administrators. The executor cannot, indeed, refuse to accept any of the testator's leasehold property, or the tenancy of any house or land which he occupied, although they may not only not be beneficial to the estate, but may entail a burthen upon it, for an executor must take *the whole* of his testator's personal estate, or *none;* he cannot pick and choose amongst it.

All goods, chattels, money, and securities for money, even money secured by a mortgage of freehold estate—tame and domestic animals, as horses, cattle, sheep, poultry, &c., form part of the personal estate of the testator.

Trees, grass, and the fruit growing on the testator's freehold or copyhold land at the time of his death, pass with the land to the heir or devisee. But the executors have a right *as against the heir* to the growing crops of corn, and of other things, such as hemp,

flax, hops, potatoes, and the like, which are sown and reaped annually, and the production of which is the result of cultivation and labour. If, however, the estate is devised, the devisee (unless the will contains a contrary direction) takes the growing crops as well as the land.

We have said that the chattels of the deceased pass to the executor as part of the personal estate. There are, however, some exceptions to this rule. In the first place, family heirlooms go to the heir. Secondly, fixtures generally pass with the property to which they are annexed, the exceptions being machinery erected for the purposes of trade, of a description which in the neighbourhood is commonly treated as removable by a tenant, and which can be removed without injury to the freehold; and those articles of domestic convenience in a dwelling-house, such as looking-glasses, cornices, bookshelves, &c., which are but slightly annexed to the walls, and which, indeed, according to the recent decisions of the courts, can hardly be reckoned fixtures at all.* Thirdly, the executors cannot claim any goods settled on the wife of the testator by a valid marriage settlement, *any articles which he has given to her*, or what are called the *paraphernalia* of the wife, *i. e.* her apparel, and ornaments of a kind suitable to

* This is a general, practical statement of the law on the subject of fixtures, but it is in so very unsettled a state, and its application depends so much on the particular circumstances of each case, that an executor should, for his own protection, always obtain legal advice in case of a dispute arising between himself and the heir, or devisee, with respect to fixtures.

her rank and degree. Not only do not these come to the executors, although the husband might have disposed of them had he wished; but if he has pawned them during his lifetime, the widow will be entitled to call on the executors to redeem them if her husband have left sufficient assets.

The executors have a right to sue the debtors of the deceased, and realize for the benefit of the estate all debts due to the testator for goods sold, or on bonds, contracts, bills, promissory notes, &c. They may also obtain damages for the breach, during the lifetime of any testator, of any contract which he may have made with another person; and it is unnecessary to say that they may bring actions for the breach, *after* the death of the testator, of any contracts made with him, "his executors, administrators, and assigns."

They cannot, however, bring any action for an injury to *the person* of the testator; the right to *bring* such actions for assault, false imprisonment, the unskilfulness of a medical practitioner, and others of a like kind, which he might have brought, dies with him. They may, however, bring an action for an injury done to any portion of the personal estate of the testator, either before or since his death, by which such estate has been rendered less valuable in their hands. And within one year after the testator's death, they may bring an action for any injury done to his real estate not more than six months before his death, and may apply any damages recovered to the augmentation of the personal estate. Moreover, should the testator be

killed by the negligence of any person or corporation, the executors may (under the 9th and 10th Vict. c. 93) bring an action against such corporation; but although the action is brought in their name, the damages recovered will go not to the testator's estate, but to the wife, husband, parent, or child of the deceased—amongst whom the jury may apportion the sum awarded in such a manner as they think fit. An action of this kind must be commenced within twelve months from the death of the testator.

By the death of a master a servant is discharged, and therefore the executors and administrators can bring no action to enforce any agreement of service entered into with their testator. Nor can they insist on retaining the benefit of the services of an apprentice, unless by his indentures he is expressly bound to the testator, his executors, and administrators.

If the testator was the owner of land in fee-simple,* any rent due from his tenants, but unpaid at the time of his death, will go to the executors; any rent becoming due after his death will go to the heir. If, indeed, he had only a life-estate in the land, the case is somewhat more favourable to the executors, for they will not only be entitled to rent which became due during his life-time, but by 11 Geo. II. c. 19, s. 15, "where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable upon

* A person is said to have the fee-simple of land when he has—not a mere *interest*, however long, in it—but the entire absolute property.

any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same is made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived, of the last year or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively."

And it may be stated generally, that *all* actions or suits actually brought by the testator, and proceeding at the time of his death, may be proceeded with by the executors, and the damages recovered therein added to the personal estate which they are charged to administer.

Although a wife cannot, in the lifetime of her husband, enter into any contracts, incur debts, sign valid bonds, or give bills or promissory notes, she may have legacies left—bonds, bills or promissory notes given to her. Now unless these are settled upon her to her separate use, the husband has a right to receive the proceeds, and appropriate them to his own use. If he have done so in his lifetime, these form part of his personal estate. So they do, also, in cases where the law gives him a right to sue for them in his own name, and he has so sued and recovered judg-

ment. But if he neither actually received the proceeds of such legacies, bonds, bills, notes, &c., nor recovered a judgment in an action brought in his own name *alone*, nor had execution awarded in an action brought in the joint names of himself and wife, nor obtained a decree from a Court of Chancery for the payment of the money to him or to his use, then on his decease the right of the wife will, as the law expresses it, "survive." That is to say, after her husband's death, she will be entitled to the legacies, bonds, bills, promissory notes, &c., left or given to her in his lifetime, and his executors must not attempt to meddle with them.

CHAPTER XIII.

THE POWERS AND DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

THE powers of an executor and an administrator are exactly the same.

Within a convenient time after the testator's death or the grant of administration, the executor or administrator has a right to enter the house of the deceased (even although it may on his decease have descended to the heir) in order to remove the goods of the

deceased, provided he do so without violence; or that the door be open, or at least a key be in the door. Although, however, the hall-door be open, he cannot justify forcing the door of any chamber to take the goods contained in it, but is empowered to take those only which are in such rooms as are unlocked or in the doors of which he may find the keys. He has also a right to take deeds and other writings relative to the personal estate out of a chest in the house if it be unlocked, or the key be in it, but he has no right to break open even a chest. If he cannot take possession of the effects without force he must desist, and bring an action. On the other hand, if the executor or administrator be remiss in removing the goods within a reasonable time, the heir may distrain them.*

The executors or administrators of the deceased have, of course, all the necessary powers to enable them to get in the estate of the testator, and to enforce payment of money due to him. They may bring actions. They may distrain not only for the rent of any leasehold land of the testator's, which either he or they may have let to an under-tenant; but they may also distrain for the arrears of rent due at the time of the testator's death from the tenants of any of his freehold or copyhold property.

They can dispose absolutely of the whole personal estate of the testator as freely as he could have done in his lifetime; selling, mortgaging or giving away any part of it, subject, however, as we shall hereafter

* Williams's "Executors and Administrators," vol. ii. p. 832.

m ... good to the estate any loss
c ... ident or wasteful manner of
r ... to the intervention of the
n ... ch, if it sees fit, may take the
l ... estate into its own hands on the
t ... ecutor or administrator is incom-
... worthy. The important point, how-
... who have dealings with executors or
... that a sale, mortgage or gift by them
... the property cannot be recovered back
... rchaser, mortgagee or donee, unless it
... he knew the executor was a party to a
... the estate and acted collusively with him
... it out. Generally speaking also an executor
... idly dispose of or pledge any portion of the
... 's estate in payment of, or as security for, his
... debt to a third person, for in such case that
... must know that the executor was betraying his
... and acting contrary to good faith.

One of the most important points for an executor to bear in mind is, that he cannot himself, directly or indirectly, purchase any part of the testator's estate.

Notes or bills made payable to the deceased, or to his order, may be endorsed by the executor or administrator.

Executors or administrators, however numerous, are regarded in law as one person; and each executor has full authority over the testator's estate, and may act without the sanction of his colleagues; the acts of one being deemed the acts of all. A single executor may

therefore effect a valid sale or mortgage of any of the testator's property; but it is almost unnecessary to say that it would be most improper for him to do so unless he had the sanction of his co-executors.

The first duty of an executor is to conduct the funeral in a manner suitable to the condition of life of the deceased, and to the fortune which he has left behind him. If the estate of the deceased is solvent—that is, if more than sufficient is left to pay his debts—the court will not scrutinize very closely any expenditure which the executor may incur on this head. But on the other hand, if the estate be insolvent, the executor must be careful to incur no greater expense than is necessary for a decent funeral, for it would be obviously unjust to the creditors to allow more than this to be abstracted from the assets which are already insufficient to discharge their just claims.

The executor must then obtain probate of the will of the deceased, about which we have already said sufficient in a previous chapter.

At as early a period as possible the executor or administrator should draw up an inventory of the goods, chattels, money, securities, debts, leaseholds, &c., comprised in the personal estate of the deceased, giving therein such a full and true description of them as may enable them to be identified.

The goods and chattels, leaseholds, &c. must be appraised; and although it is not strictly necessary, it is better that this should be done by sworn ap-

praisers. The estimated value of each chattel must be placed opposite to it in the inventory; and the executor or administrator must also, in stating the debts due to the deceased, distinguish those which he believes to be good from those which he considers to be bad or doubtful.

This inventory the executor or administrator is bound on request to show to any person interested in the estate—such as a creditor or legatee.

Another important duty of the executor is, to get together all the goods and chattels of the deceased, and to place them in some convenient and safe place of custody. He must also, as promptly as possible, take steps to recover the debts due to the testator, for if through any delay on his part a debtor should have an opportunity of getting out of the way, or if the debt should become barred by the Statute of Limitations, the executor would be compelled to make good the loss to the estate. And should the will direct the sale of any of the testator's property and securities, the executors must be careful to avail themselves of the first favourable opportunity, as they might otherwise be debited with the loss upon a less profitable sale.

In many cases it will be well for the executors, shortly after a testator's decease, to insert an advertisement in the principal newspapers of the place where the deceased resided, for all persons standing indebted to the deceased to pay the respective amounts owing by them, and for persons having claims against the estate

to forward the particulars to them. The object of this is, of course, to place them as early as possible in possession of full and complete knowledge of their assets and liabilities, so that they may not improperly pay any debts or legacies.

THE PAYMENT OF DEBTS.

Having paid the funeral expenses of the deceased, and those of proving the will, the next duty of the executor is to pay his debts. Now these do not all stand on the same footing. Some have what is called "priority," *i. e.* they are entitled to be discharged in full before anything whatever is paid on account of those of an inferior description. And it is of the utmost importance that an executor should attend to this, for if by his paying debts out of their proper order he exhausts the assets, which ought to have satisfied those having a prior claim, he will have to make good the deficiency out of his own pocket.

"Record"* and "specialty"† debts due to the Crown stand first.

Then come certain classes of debts to which priority is given by various statutes. Those to which it is of most practical importance to refer are debts not exceeding 5*l.*, due to the Post Office for letters; money due to the parish by an overseer for the poor; and money due to a Friendly Society by one of its officers.

* A "record" debt is a debt for which a judgment has been recovered in a Court of Record; or which are due upon a recognizance entered into before such a court.

† A "specialty" debt is one secured by deed.

After them, in order, follow debts of record due to private individuals; judgment debts having priority over those on recognizance. And it should be remarked that the fact that one judgment has been obtained first, does not give it any priority over one of a later date. The judgment creditor who first takes out execution must be paid first; and amongst those who have not taken out executions, the executor may pay which he will first.

Of an inferior order are specialty debts due to a private person, *i. e.* debts due on bonds under seal, on covenants or deeds, &c. Rent, whether reserved by a deed or not, stands upon the footing of a specialty debt.

Not until all these classes of creditors have been paid in full, comes the turn of the "simple contract" creditors. Every one is a simple contract creditor to whom the deceased owed money not secured by a judgment or a deed.

We have said that if an executor or administrator pays debts of a lower before those of a higher degree, he must answer out of his own estate for any deficiency which may thus arise in the assets properly applicable to the payment of creditors having priority. But then in order to make him thus liable, he must have had notice of the existence of a superior debt at the time he paid one inferior in character. The law, however, presumes that an executor has notice of all judgments recovered against the testator, which are duly registered in the proper office, and an executor

should therefore make search there. With respect to other debts by priority, they must be actually known to the executor in order to render him liable for the payment of those of an inferior grade.

An executor is not bound to divide the assets (if insufficient for a payment in full) rateably amongst the creditors of an equal degree. He may select any of such creditors he likes, give the preference to them, and pay them in full, leaving the others unsatisfied. That, however, is subject to this qualification:—If a creditor commence an action, an executor must not *voluntarily* pay another of the same degree without reserving sufficient to answer the claim of the person who is suing him; but even then he may favour any creditor whom he wishes to serve by enabling him to recover a judgment for his debt sooner than the creditor who is suing hostilely can do, and he may then pay the latter, although his judgment has been thus collusively obtained.

One of the most important privileges of an executor (not, however, enjoyed by an executor *de son tort*) is that of paying himself any debt which may be due to him from the testator, in preference to any other claim of an equal degree: *i. e.* he may pay himself a debt due on a deed before other specialty creditors, or a debt due on simple contract, before any other simple contract creditors. But where there are joint executors, both being creditors of the deceased, and of the same degree, one cannot retain for his debt to the prejudice of the other; the proper course, therefore,

in such an event, is for both to retain as soon as possible the amount of their aggregate debts, or as large a sum on account as they can, and to apply this either in total discharge, or rateably on account of their debts.

An executor may pay debts due from the testator, although these are barred by the Statute of Limitations: and he may also retain for a debt due to himself, although it is in a similar position. An administrator has ordinarily the same right as an executor to retain a debt due to him from the testator; but when the court grants administration to a creditor, it usually puts him on terms not to avail himself of this right, but to share rateably with other creditors of the same degree.

PAYMENT OF LEGACIES.

The executor must take care to pay all the debts, or to reserve sufficient to defray them before he sets about the performance of his last duty—the payment of the legacies. He cannot even part safely with any article which is the subject of a "specific bequest," * for if the value of it was thus lost to the estate, and the assets turned out to be insufficient to satisfy the creditors, the executor would be answerable for such value, with interest at the rate of 6 per cent.

It very often happens that the estate is subject to contingent liabilities; *i. e.* the testator may have given bonds, or entered into covenants or contracts, his ulti-

* See Chap. VII. p. 51.

mate liability (or that of his estate) under which, may be a matter of doubt for a considerable period after his death. If the executor proceeds to the distribution of the estate while such liabilities are outstanding, he must either retain a sum which he judges sufficient to satisfy them in any event, or he must for his own protection obtain from the legatees a bond to indemnify him against any future claims. For if he did not, and if at any future time the estate became liable to one of these contingent debts, the fact that he had distributed all the property amongst the legatees before the debt in question became due, would not afford him any protection. He would be obliged to pay the debt himself.

If, after discharging the debts, the estate is sufficient to pay the whole of the legacies left by the testator, the executor of course can have no difficulty in discharging his duty. But it frequently happens that a testator over-estimates the value of his estate, and leaves in legacies a far greater sum than it will yield. What, then, is the executor to do? In the first place, he must hand over to the respective legatees all the articles specifically bequeathed to them. Then, unless the testator has directed that some of the legatees should be paid before or in preference to others, he must make a proportional abatement of all the general legacies, paying to each legatee the same proportion of the sum bequeathed. And he must remember that, although he has the power to retain his own debt as against the other creditors of the testator, he has no similar right

in respect to any legacy that may be left him, but must submit in respect of it to the same abatement as the other legatees. There are, indeed, two qualifications to this general rule, as to the proportional abatement of all legacies:—1st. The testator may, as we have said, direct that some shall have a priority over others; and 2nd, If any legacies are left, not as mere gifts, but for a valuable consideration, or in discharge of a debt owing by the testator to the legatee, &c., these have a priority given to them by law, and must be paid in full before the rest of the general legatees can receive anything.

Legacies, whether general or specific, do not become the property of the legatees, until the executor has assented to their having them. Even, therefore, when a particular article has been bequeathed, the person to whom it is left must be careful not to take it without the consent of the executor, for if he did, he would render himself liable to legal proceedings. So far is this principle carried, that even if the testator by his will forgive a debt, that will not discharge the debtor until the executor signify his assent. Of course, however, a deficiency of assets to pay the testator's debts is the only circumstance that justifies an executor in withholding his assent to legacies. And if that does not exist, he will be compelled by the Court of Chancery to carry out the directions of the will.

An executor cannot be compelled to pay a legacy until twelve months after the testator's death—the law

giving him that time to get in the debts, and make himself fully acquainted with the probable amount of the assets. But an executor may, if he likes, pay the legacies earlier, and on the other hand, the court will not compel him to pay them then, if he can show that he has been unable to ascertain whether or not the estate will yield sufficient to justify him in doing so.

If an annuity be given by will, it commences immediately upon the testator's death, and consequently the first payment will be due a year after that event. And it should be noticed, that even if the testator has expressly directed that the first payment shall be made *within* a year after his death, or that it shall be payable quarterly or monthly—although the first payment of the annuity will, in that case, fall *due* before the expiration of a year from his decease, the executor cannot, nevertheless, be compelled to pay it before the end of the twelvemonth.

If furniture or other personal chattels are bequeathed to one person for life, and are after his death to go to another, the executor must, on delivering them to the first taker, make him sign an inventory of them, admitting both their receipt and the fact that upon his death they are the property of the other person. But the executor cannot demand that the first person should give any security for the ultimate delivery to the second, unless he is prepared to show the court that there would otherwise be a danger of the directions of the will not being carried out. If no time be fixed by the testator for the payment of general legacies, interest will be-

come payable upon them at the expiration of a year from the testator's death, even although the position of the estate rendered it impracticable for the executor then to pay them. If legacies are not to be paid until a fixed time, then, however distant that may be, no interest is payable in the meantime, except in the case of a legacy left to an infant by his parent, or by a person who has stood in the relation of a parent to him. In that case, if the infant would be otherwise unprovided for, the law humanely allows interest to be paid by way of maintenance for him. An executor is compelled to pay interest on legacies, at the rate of 5 per cent., when the principal was employed in trade; the usual rate in other cases is 4 per cent. Compound interest is not payable, except where the executor was directed to invest a fund, that it might accumulate for the benefit of the legatee, but neglected to do this. Interest is not payable upon the arrears of an annuity.

"Specific legacies" are considered as being, to a certain extent, set apart from the general estate. Thus, if a particular sum of stock, an ascertained parcel of shares, or certain live stock, are left to a legatee, then any dividends that may be paid in the first two cases, or any increase that may take place in the last, subsequent to the testator's death, will go to the legatee, together with the stock, shares or live stock from which they have arisen.

It is in many cases very important for the executor to be well informed with respect to the proper person

to whom a legacy should be paid. In the ordinary case of an adult—not being a married woman—there is of course no difficulty. But if the legatee is an infant, the executor will not be justified in paying it either to him or to his parents or guardians in trust for him, without the sanction of the Court of Chancery. If he do he will run a great risk of being compelled to pay it over again, when the legatee comes of age. The law has, however, provided a means by which an executor who wishes to wind up an estate may safely do so, without waiting until the infant legatees attain their majority. He may pay such a legacy into the Bank of England, with the sanction of the Accountant-General of the Court of Chancery, which is readily and inexpensively obtained. This officer, on being satisfied that the stamp duties have been duly paid, gives the executor a certificate (which is a good discharge to him as against any future claim), and places the amount of the legacy to the account of the infant, who will obtain it when of age, by applying to the Court of Chancery. While the executor retains the legacy in his own hands, he may apply to the maintenance of the infant such a portion of the interest accruing due upon it as may be necessary. He should not do this, however, if the parents are able to support the child in a manner suitable to the property he will possess, and the position he will fill on coming of age.

If a legacy be given to a married woman, "for her separate use," or "for her own use and at her own disposal," it must be paid to herself, and she alone can

give the executor a valid receipt for it. If it be not so left, however, it must be paid to her husband. When, however, the husband has made no marriage-settlement on his wife, the executor may refuse to pay the legacy to him, until he has consented to settle a portion of it upon her. In doing so, however, he ought always to act under legal advice.

If a legatee be abroad, or cannot be found, the executor may pay the amount bequeathed to him into the Bank of England, with the sanction of the Accountant-General of the Court of Chancery (as in the case of an infant legatee).

An executor cannot compel a legatee to refund any sum which he has paid to him voluntarily, and with a full knowledge of all the testator's debts—even although the estate should ultimately turn out insufficient to discharge all the claims upon it. For in the absence of legal steps to compel him to pay the legacy, he might have held it over until he had ascertained how the estate would turn out. But if he were compelled (by proceedings in Chancery) to pay the legacy; or if he paid it in ignorance of some of the testator's debts, then if the estate ultimately turn out insolvent, he may, by filing a bill in Chancery, compel the legatee to refund. A creditor, if his debt remain unpaid, may compel a legatee to refund. And if the executor be insolvent, and there is no sufficient remedy against him, a legatee who has not been paid may compel one who has been paid to refund a part of his legacy—provided, *i. e.*, that the estate was never sufficient to

pay them both in full. But if the executor be solvent, or if it was by his mismanagement that the estate was rendered insufficient to pay all the legacies in full, an unpaid legatee cannot take any proceedings against one who is in a more fortunate position.

A will ought always to contain a clause, nominating "a residuary legatee," *i. e.* a person to whom shall go whatever may remain over of the estate, after the payment of the debts and legacies. If such a person be named, he will, after such payment, take all the personal property of the testator which has not been validly disposed of otherwise; and if he die before "the residue" (as the property undisposed of is called) is ascertained, his executors will succeed him. If the testator should make no disposition of the residue, it must be divided like an intestate's estate,* amongst his next of kin, if there are any. If, however, there are none, then it becomes the property of the executor or executors.

CHAPTER XIV.

OF THE DISTRIBUTION OF AN INTESTATE'S ESTATE.

WE have now to speak of the mode in which the personal estate of a person who dies intestate (*i. e.*

* See Chap. XIV.

without making a will) must be distributed by his administrator. And, as every person who only imperfectly disposes of his property by will virtually dies intestate as to the part whose destination is thus undisposed of, that is divided by the executor in the same manner.

The mode of distribution is regulated by "the Statute of Distributions," 22 and 23 Car. II. c. 10, explained by 29 Car. II. c. 33, whereby it is enacted that the surplusage* of intestates' estates, except of married women (whose personal property goes by common law to their husbands), shall, after the expiration of one full year from the death of the intestate, be distributed in the following manner:—One-third shall go to the widow of the intestate, and the residue in equal proportions to his children, or, if dead, to their representatives (that is, their lineal descendants†); if there are no children or legal representatives existing, then a moiety shall go to the widow and a moiety to their next of kindred, in equal degree, and their representatives; if no widow, the whole shall go to the children; if neither widow nor children, the whole shall be distributed amongst the next of kin in equal degree and their representatives: but no representatives are admitted amongst collaterals further than the children of the intestate's brothers and sisters.

The mode in which the nearness of kin to the intestate is determined is as follows:—Taking the per-

* That is, after paying their debts.

† Children, grandchildren, &c.

son whose position you wish to ascertain, count the steps up from him to the common ancestor of him and the intestate, and then count the steps downward to the latter. The sum of these steps shows the degree of kindred in which the claimant stands to the testator. Thus, take a great uncle of the intestate—he is four times removed from the intestate—for, being the grand-uncle of the intestate, he is of course the uncle of his father, the brother of his grandfather, and the son of his great-grandfather, who is the common ancestor. Now, from the grand-uncle to the great-grandfather is one step; to the intestate's grandfather two, to the intestate's father three, and to the intestate himself four. The following table, constructed in obedience to this rule, shows the degree in which each of the relations named stands to the intestate:—

Son 1	Father 1	Grandfather... 2	Great-grandfather ... 3
Grandson 2	Brother..... 2	Uncle 3	Great-uncle... 4
Great-grandson 3	Nephew..... 3	Cousin-german 4	Great-uncle's son 5
	Great-nephew. 4	Cousin-german's son 5	Second cousin 6

The lower the figure, the smaller the number of steps between the testator and the person whose position in regard to him is in question, the nearer is the heirship. The residue, after deducting the widow's share, is, as we have just seen, distributed amongst the children or lineal descendants of the intestate, if he have left any;

but if he have not, then amongst those who stand nearest to him, according to the above table. There are, however, two exceptions to this rule, which must be carefully attended to. It might seem that if an intestate left two sons, and also grandchildren, the issue of a deceased son, the latter would be excluded, as not being so near to the intestate as his sons. That, however, is not so. They will take *their father's share*, as his representatives; *i. e.* the intestate's property will be divided into thirds, one going to each living son, and one being divided amongst the children of the deceased son, however numerous. And in the same way, if the intestate leaves brothers or sisters, and also children of a deceased brother or sister, such children take what would have been their parents' share, if living. In both these cases, the grandchildren in the one, and the nephews or nieces in the other, take by "representation;" and the result may be very different from what it would be if they claimed in their own right, which they would do if the intestate had left no sons in the first case or no brothers in the latter. Let us illustrate this. Suppose the intestate leaves a son, and five grandchildren by a deceased son; the five grandchildren only get half the property amongst them, the other half going to the son. But suppose the intestate simply left a grandchild by one son, and five grandchildren by another, then each of the six grandchildren (they being all equally near of kin to the intestate) would take a sixth of the property.

The other exception to the general rule we have

given is the following:—If the intestate leaves a *father*, and brothers and sisters, the father, as next of kin, takes all; and as no difference is usually made with respect to sex under this statute, it might seem that if a *mother*, brothers, and sisters were left, she would have the same right. That, however, is not so; she would only share equally with the brothers and sisters.

The following table, for which we are indebted to a work of authority, exhibits, in a convenient form, the manner in which distribution takes place in a great number of instances:—

If the intestate dies, leaving—	*His personal representatives take as follows:—*
Wife and child, or children.	One-third to wife, rest to child or children (whether male or female, or posthumous, and whether by the same or different wives); and if the children are dead, then to their representatives (that is, their lineal descendants), except such child or children not being the heir-at-law, who had an estate by settlement of the intestate in his lifetime equal to other shares.
Wife only	Half to wife, rest to next of kin, in equal degrees, to intestate or their legal representatives.
No wife or child. . .	All to next of kin and to their legal representatives.
Child, children, or representatives of them.	All to him, her, or them.

Children by two wives .	Equally to all.
If no child, children, or representatives of them.	All to next of kin, in equal degree, to the intestate.
Child and grandchild . .	Half to child and half to grandchild, who takes by representation.
Husband	Whole to him.
Father, and brother, or sister.	Whole to father.
Mother, and brother, and sister.	Whole to them equally.
Wife, mother, brother, sisters, and nieces.	Half to wife, and the residue to mother, brother, sisters, and nieces.
Wife, mother, nephews, and nieces.	Two-fourths to wife, one-fourth to mother, and other fourth to nephews and nieces.
Wife, brothers or sisters, and mother.	Half to wife, half to brothers or sisters and mother.
Mother only . . .	The whole.
Wife and mother . .	Half to wife, half to mother.
Brother or sister of whole blood, and brother or sister of half blood.	Equally to both.
Posthumous brother or sister, and mother.	Equally to both.
Posthumous brother or sister, and brother or sister born in lifetime of father.	Equally to both.
Father's father and mother's mother.	Equally to both.
Uncle or aunt's children, and brother or sister's grandchildren.	Equally to both.
Grandmother, uncle, or aunt.	All to grandmother.
Two aunts, nephew, and niece.	Equally to all.
Uncle, and deceased uncle's child.	All to uncle.

Nephew by brother, and nephew by half-sister.	Equally.
Nephew by a deceased brother, and nephews and nieces by a deceased sister.	Equally amongst the nephews and nieces.
Brother and grandfather .	Whole to brother.
Brother's grandson, and brother or sister's daughter.	To daughter.
Brother and two aunts .	To brother.
Brother and wife . .	Half to brother, half to wife.
Mother and brother . .	Equally.
Wife, mother, and children of a deceased brother or sister.	Half to wife, a fourth to mother, and the remaining fourth equally amongst the nephews and nieces.
Wife, brother, or sister, and children of a deceased brother or sister.	Half to wife, a fourth to brother or sister, and a fourth to deceased brother or sister's children.
Brother or sister, and children of a deceased brother or sister.	Half to brother or sister, and half to children of deceased brother or sister.

A wife may be deprived by her marriage settlement of any right to claim her half or third under the Statute of Distributions. But if a husband have, under such settlement, covenanted to leave his wife a certain sum, and have not fulfilled the obligation, she may at his death—accordingly as she thinks it most advantageous—take her half or third, or proceed against the executor or administrator for the sum to which she is entitled under the covenant of the deceased.

There is one important provision of the Statute of Distributions to which, before we conclude, we must call

particular attention. It is provided that no child of the intestate (except his heir at law) on whom he has settled in his lifetime any estate in lands or a pecuniary portion equal to the distributive shares of the other children, shall participate with them; but if what was so given him by way of advancement * be not equivalent to their shares, then so much as will make his portion equal to their shares shall be allotted to him.

CHAPTER XV.

OF PROBATE AND LEGACY DUTIES.

On proving a will, or on taking out letters of administration, the executor or administrator must pay certain stamp duties, which are levied under the statute 55 Geo. III. c. 184, upon *the personal estate* of the testator bequeathed by will, or administered under letters of administration granted by the Court of Probate. These duties are levied on two scales: the first applying to the case when the testator has left a will which

* Inconsiderable sums which may be given by a father to a child, trifling presents, or money laid out *for his maintenance*, are not considered to be money given "by way of advancement." That term is applied to such sums as, looking to the child's sphere in life, are calculated to improve his position, and push him on in the world.

is either proved by his executor or administrator taking out letters of administration with the will annexed; and the second to the case of the testator dying intestate. We subjoin both as they are given in the statute to which we have referred.

I.—*On probate of a Will and Letters of Administration with a Will annexed to be granted in England.*

When the estate and effects for or in respect of which such probate or letters of administration respectively shall be granted (exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons and not beneficially), shall be—

	£		£		£	s.
Above the value of	20	and under	100	—	0	10
Of the value of	100	„	200	—	2	0
„ „	200	„	300	—	5	0
„ „	300	„	450	—	8	0
„ „	450	„	600	—	11	0
„ „	600	„	800	—	15	0
„ „	800	„	1000	—	22	0
„ „	1000	„	1500	—	30	0
„ „	1500	„	2000	—	40	0
„ „	2000	„	2000	—	50	0
„ „	2000	„	4000	—	60	0
„ „	4000	„	5000	—	80	0
„ „	5000	„	6000	—	100	0
„ „	6000	„	7000	—	120	0
„ „	7000	„	8000	—	140	0
„ „	8000	„	9000	—	160	0
„ „	9000	„	10,000	—	180	0
„ „	10,000	„	12,000	—	200	0

		£		£		£	s.
Of the value of		12,000	and under	14,000	—	220	0
„	„	14,000	„	16,000	—	250	0
„	„	16,000	„	18,000	—	280	0
„	„	18,000	„	20,000	—	310	0
„	„	20,000	„	25,000	—	350	0
„	„	25,000	„	30,000	—	400	0
	„	30,000	„	35,000	—	450	0
„	„	35,000	„	40,000	—	525	0
„	„	40,000	„	45,000	—	600	0
„	„	45,000	„	50,000	—	675	0
„	„	50,000	„	60,000	—	750	0
„	„	60,000	„	70,000	—	900	0
„	„	70,000	„	80,000	—	1050	0
„	„	80,000	„	90,000	—	1200	0
„	„	90,000	„	100,000	—	1350	0
„	„	100,000	„	120,000	—	1500	0
„	„	120,000	„	140,000	—	1800	0
„	„	140,000	„	160,000	—	2100	0
„	„	160,000	„	180,000	—	2400	0
„	„	180,000	„	200,000	—	2700	0
„	„	200,000	„	250,000	—	3000	0
„	„	250,000	„	300,000	—	3750	0
„	„	300,000	„	350,000	—	4500	0
„	„	350,000	„	400,000	—	5250	0
„	„	400,000	„	500,000	—	6000	0
„	„	500,000	„	600,000	—	7500	0
„	„	600,000	„	700,000	—	9000	0
„	„	700,000	„	800,000	—	10,500	0
„	„	800,000	„	900,000	—	12,000	0
„	„	900,000	„	1,000,000	—	13,500	0
„	„	1,000,000	and upwards		—	15,000	0

II.—*On Letters of Administration without a Will annexed to be granted in England.*

Where the estate and effects for or in respect of which such letters of administration shall be granted

(exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons and not beneficially), shall be—

	£		£		£	s.
Above the value of	20	and under	50	—	0	10
Of the value of	50	„	100	—	1	0
„ „	100	„	200	—	3	0
„ „	200	„	300	—	8	0
„ „	300	„	450	—	11	0
„ „	450	„	600	—	15	0
„ „	600	„	800	—	22	0
„ „	800	„	1000	—	30	0
„ „	1000	„	1500	—	45	0
„ „	1500	„	2000	—	60	0
„ „	2000	„	3000	—	75	0
„ „	3000	„	4000	—	90	0
„ „	4000	„	5000	—	120	0
„ „	5000	„	6000	—	150	0
„ „	6000	„	7000	—	180	0
„ „	7000	„	8000	—	210	0
„ „	8000	„	9000	—	240	0
„ „	9000	„	10,000	—	270	0
„ „	10,000	„	12,000	—	300	0
„ „	12,000	„	14,000	—	330	0
„ „	14,000	„	16,000	—	375	0
„ „	16,000	„	18,000	—	420	0
„ „	18,000	„	20,000	—	465	0
„ „	20,000	„	25,000	—	525	0
„ „	25,000	„	30,000	—	600	0
„ „	30,000	„	35,000	—	675	0
„ „	35,000	„	40,000	—	785	0
„ „	40,000	„	45,000	—	900	0
„ „	45,000	„	50,000	—	1010	0
„ „	50,000	„	60,000	—	1125	0
„ „	60,000	„	70,000	—	1350	0
„ „	70,000	„	80,000	—	1575	0

	£		£		£	s.
Of the value of	80,000	and under	90,000	—	1800	0
„ „	90,000	„	100,000	—	2025	0
„ „	100,000	„	120,000	—	2250	0
„ „	120,000	„	140,000	—	2750	0
„ „	140,000	„	160,000	—	3100	0
„ „	160,000	„	180,000	—	3600	0
„ „	180,000	„	200,000	—	4000	0
„ „	200,000	„	250,000	—	4500	0
„ „	250,000	„	300,000	—	5625	0
„ „	300,000	„	350,000	—	6750	0
„ „	350,000	„	400,000	—	7875	0
„ „	400,000	„	500,000	—	9000	0
„ „	500,000	„	600,000	—	11,250	0
„ „	600,000	„	700,000	—	13,500	0
„ „	700,000	„	800,000	—	15,750	0
„ „	800,000	„	900,000	—	18,000	0
„ „	900,000	„	1,000,000	—	20,250	0
„ „	1,000,000 and upwards			—	22,500	0

Probate of the will or letters of administration of the effects of any common seaman, marine or soldier, who shall be slain or die in the service of Her Majesty, her heirs or successors, are exempt from all stamp duties.

Section 37 of the Act imposes penalties for taking possession of, or administering to, the personal estate and effects of a deceased person without obtaining probate of the will, or taking out letters of administration. Section 38 prohibits the grant of probate or letters of administration until the applicant, or some other competent person or persons, has or have made an affidavit that the personal estate of the deceased is under a certain sum, in order that the stamp duty may be paid on such sum. Section 40 provides for a return of stamp

duty if it shall ultimately turn out that the estate realises less than was estimated at the time probate duty was paid. And subsequent sections authorize the Commissioners of Stamps to receive additional dues, and impose the requisite stamps on wills and letters of administration, in case the estate shall turn out of greater value than was at first supposed. If these additional duties were not properly paid, the probate or letters of administration might be invalidated, and the executors or administrators subjected to penalties.

The statute 9 Geo. IV. c. 92, s. 40, provides that when the whole estate and effects of a depositor in a savings' bank do not exceed the value of 50*l.*, no probate or administration stamp shall be necessary; nor by section 41 is any stamp duty chargeable upon the administration bond, or any affidavit given or made in such a case. And in case a depositor dies, leaving a sum of money in the savings bank, not exceeding 50*l.*, and without leaving a will, and no administrator appear, the trustees are permitted to pay and divide the effects of the deceased intestate according to the Statute of Distributions.

The probate stamp must cover the value of the assets at the time the will is proved, or the letters of administration granted. But in calculating the value of the effects of the deceased, the executor or administrator is not bound to include debts which are bad or doubtful. Nor is duty payable in respect of property in a foreign country, belonging to a testator dying in the British empire, although the property be brought

into and administered in this country. Probate duty, however, is payable in respect of foreign bonds which are held by a testator or intestate dying in this country, *provided that they are transferable by delivery only.*

A testator, who is possessed of real property, if he wishes its value to be divided amongst his children or other legatees, usually (if well advised) bequeaths it to his executors, in trust to sell it and divide the proceeds amongst such children or other legatees. It is important to remember that *no* probate duty is payable in respect of *real property*, even when thus devised.

As most of our readers are probably aware, legacies are subjected to stamp duties upon their amount, if they are pecuniary legacies, or upon their value, if consisting of goods or chattels. Now, with a few excepted cases, on which we need not dwell, the legacy duty must be paid by the executor or administrator upon retaining either for himself, or for the benefit of any other person, any legacy or part of any legacy, or the residue or part of any residue, which he shall be entitled to retain; or upon the delivery, payment or discharge of any legacy, residue, &c., to which any other person shall be entitled.

If the testator directs that the legacies are to be paid or delivered to the legatees duty free, the executor or administrator will, of course, hand them over without any deduction or charge for legacy duty, which must in that case be paid out of the estate; the executor or administrator being responsible

for such payment, but, of course, having the power to make proportional abatement from *all* the legacies, if need be, to discharge this, just as any other debt to be paid out of the testator's estate.

If, however, nothing is said in the will as to the payment of the legacy duty, the executors must deduct or charge it when they pay or deliver the legacy. If the duty be not paid to the proper officers (in the provinces the stamp distributor of the district, in London a department of the Inland Revenue Office) before the legacies are retained or discharged, the executor or administrator having actually deducted it, the amount of such duty will become a debt from them to Her Majesty; and if they pay the legacy without deducting the duty, then both they and the legatees will incur a similar liability.

The following is a list of the legacy duties payable under the Stamp Act now in force, and applicable to this subject:—

Legacy of the value of 20*l.* or upwards, given or devolving to any child of the deceased, or any descendant of a child, or to the father or mother or any lineal ancestor of the deceased, a duty on the amount or value thereof of	£1 per cent.
Ditto given to a brother or sister of the deceased, or any descendant of a brother or sister, a duty on the amount or value thereof of . .	3 per cent.

Ditto given to a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, a duty on the amount or value thereof of . . . . 5 per cent.

Ditto given to a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of the grandfather or grandmother of the deceased, a duty on the amount or value thereof of . . . . . 6 per cent.

Ditto given to any person in any other degree of collateral consanguinity to the deceased, or any stranger in blood, a duty of . . . . . 10 per cent.

Annuities are regarded as legacies, and the duty must be paid upon them at their present value, calculated according to certain tables appended to the Act 36 Geo. III. c. 52.

Legacies under the value of 20*l.* only require a receipt stamp.

Legacies and residues, or shares of residues, devolving to the husband or wife of the deceased, or to any of the royal family, are exempted from duty, as are also legacies consisting of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles, which shall be given or bequeathed to or in trust for any body corporate,

whether aggregate or sole, or to the society of Serjeants' Inn, or any of the inns of Court or Chancery, or any endowed school, in order to be kept and preserved by such body corporate, society or school, and not for the purposes of sale.

It may be useful to remark that if the testator by his will forgive a debt, the debtor must pay legacy duty on its amount in exactly the same manner as if he had received a legacy. But, on the other hand, if the testator bequeaths money in satisfaction of his debts, even to creditors whose claims were barred by the Statute of Limitations, or in any other manner, those bequests will be considered as mere payment of such debts, and will not be liable to legacy duty.

CHAPTER XVI.

THE LIABILITIES OF EXECUTORS AND ADMINISTRATORS.

THE subject of the liabilities of executors and administrators naturally divides itself into two parts. For there are certain liabilities which they are only bound to discharge to the extent of the assets which come into their hands, and which therefore, if the estate is

properly administered, involve no personal responsibility; while there are others which the executors may incur in their personal capacity, and become bound to discharge out of their own property. We will take

I. LIABILITIES OF THE EXECUTORS TO THE EXTENT ONLY OF THE TESTATOR'S ESTATE.

Executors and administrators are liable to the extent of the assets that come into their hands, to pay all the debts of the testator; and to fulfil all his contracts, except those which, being founded exclusively on the personal skill and intellectual capacity of the testator, die with him, and do not give rise to any liability on the part of his executors or administrators; such are contracts by authors to write books for publishers, contracts by physicians to cure patients, contracts by teachers to instruct their pupils or apprentices, promises of marriage, &c.

Actions, or the right to bring actions, against the testator for wrongs committed by him—such as trespasses, illegal taking of goods, assault, slander, libel, diverting watercourses, obstructing lights, &c.—die with the testator. The only exception to this rule is in the case of injuries committed by him upon real and personal property. An action for an injury of this kind, committed by him six months before his death, may be brought against the executors within six months afterwards, and if they have assets they will be bound to pay out of the estate any damages that may be recovered. The estate of a deceased clergyman is also

liable for the dilapidation, during his lifetime, of the house or buildings upon his benefice.

Executors and administrators are not liable upon a joint contract entered into by the testator and another with a third person, except, indeed, in the case of a partnership contract. They will, however, be liable, if the contract is what is called joint and several; *i. e.* if both parties were bound together, and each separately also.

If the testator was a tenant or lessee of any land or houses, the executors, *even although they do not enter into possession,* will be bound (so far as they have assets) to fulfil all those covenants entered into by the testator in the lease which in the language of the law "run with the land." Such are covenants relating to the cultivation of the demised premises, to pay rent, to insure, not to exercise thereon certain specified trades, to repair, and to discharge the land, &c., from taxes, rates, and other burdens. *If, however, the executors enter and take possession,* they then become *personally* liable for the full amount of the rent, if that is not greater than the annual value; if it is, then they are only personally liable to pay the amount of the actual annual value, and for the excess of rent the estate alone is liable. The restriction of the personal liability of the executor to the value of the annual profits of the land, in respect of rent, does not extend to breaches of covenant to repair, but the executor may, if he has entered and taken possession of the premises, become personally responsible to the

extent of the entire damage sustained by the lessor from the breach of that covenant.

If the testator was the person to whom the lease was originally granted, there is no means of discharging his estate from the liabilities under the covenants in this document. But it very often happens that the lease had been assigned to him. Now, as the *assignee* of a lease is only liable for breaches of covenant committed during the time that he holds it, all future liability may be discharged by assigning it over *even to a pauper*. An executor, who finds himself in possession of an assigned lease, under which the rent is greater than the annual value, should immediately take this course, if the landlord refuses to accept a surrender of the lease. If he do not he may be made personally liable to the estate for the difference between the rent and the annual value.

If the purchaser of land or houses dies without having paid the purchase-money, his heir-at-law, or the person to whom the property is devised, will be entitled to have the estate paid for out of the assets.

II. THE PERSONAL LIABILITIES OF EXECUTORS AND ADMINISTRATORS.

A promise by an executor or administrator to pay a debt due from his testator or intestate will not make him personally liable unless he has received some new and valid consideration for the promise. But if the executor binds himself to payment *by deed* (even with-

out any fresh consideration), or if he gives a *written* undertaking or promise on receiving from the creditor a new and valid consideration—such as the payment of money, the supply of goods, the delivery of documents and evidences of title which the creditor has a right to retain—then the executor and administrator will be personally liable.

And if an executor sign his name to an undertaking in which he promises to pay a debt or legacy on consideration of a creditor forbearing to sue for his debt, or a legatee to take proceedings in the Court of Chancery for his legacy, he will become personally liable to such creditor or legatee.

Executors and administrators are personally liable upon all contracts entered into by them in the course of their administration of the estate of the deceased, and they cannot escape from liability by contracting only "as executors." If they give orders for the funeral of the deceased, or adopt, or sanction the acts of those who have, they will be personally responsible to the parties who fulfilled the orders.

If the executor continues the trade of the testator, he will be responsible upon all contracts entered into by him in carrying on such trade, although he receives no part of the profits, and acts strictly as a trustee.

If he brings actions, he will be responsible for the costs.

In the cases above referred to, the executor or administrator incurs a personal liability to creditors or legatees only in case the assets of the testator or in-

testate prove insufficient for the payment of the debts or legacies.

But executors and administrators are further liable to make good to the estate itself any loss in its administration, which may accrue from that negligence and misconduct on their part, which is termed by the law a *devastavit*, and is defined to be a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the duty imposed upon them.

The following acts are considered to come within this definition, and will render an executor or administrator liable to make good to the legatees or creditors any loss accruing therefrom. Misapplying the assets or incurring undue funeral expenses; paying debts out of the proper order, to the prejudice of those who have a superior claim,* and of which the executor or administrator has notice; surrendering, or failing to preserve, for the benefit of the estate, leasehold property of the testator, of which the annual value exceeds the rent, or, on the other hand, failing to relieve the estate from the burden of any leasehold of which the rent exceeds the annual value, and of which the testator was merely an assignee; releasing or compounding debts, except such is for the benefit of the estate; applying the assets in payment of debts to which the estate is not liable, *except only the discharge of debts barred by the Statute of Limitations*; acts of negligence or carelessness tend-

* See Chap. XIII.

ing to diminish the estate, such, for instance, as allowing a debt due to it to become barred by the Statute of Limitations, or permitting interest to accumulate on a debt bearing interest when he has the means of paying such debt.

An executor is not liable for the accidental loss of assets by fire or theft, nor for the loss of money secured upon land; but he will be liable for the loss of money which he has lent upon personal security, unless the testator have expressly authorized such an investment; and even if such an authority was given to him he will be liable to creditors of the estate, if the payment of these debts was prevented by the loss.

In all cases an executor who lends the funds of the estate to his fellow-executor will be liable to make good any loss which may accrue; and if, pending the distribution of the estate, he invests the funds in any stock but the Three per Cent. Consols, and the investment falls in value, he will be answerable for the money thus lost, both to creditors and legatees; and he must also make good any loss sustained, in consequence of his allowing an unnecessarily large sum to remain in the hands of a solicitor or banker. He ought, therefore, to invest in Consols the funds which are realized, and are not immediately required for the payment of debts or legacies.

One executor is not answerable for a *devastavit* committed by another, unless some act of his enabled it to be committed, or unless, being aware of it, and

having an opportunity of preventing it, he stood by and allowed it to take place.

If an executor keeps money lying dead in his hands, without a good reason for so doing, the Court of Chancery will compel him to pay interest upon it to the estate. Where he has merely acted in this manner from negligence, the rate of interest charged will be 4 per cent.; but if he has employed the funds of the estate in his own business, he will be charged interest equal to the amount of profit he has thus made, if its amount can be ascertained; if not, interest will be charged at the rate of 5 per cent. So careful is the law to prevent an executor benefiting himself by the employment of the funds of the estate, that if he has done no more than pay a portion of them into his own bankers in his own name, he may be charged interest thereupon at 5 per cent.

An executor or administrator will be allowed all reasonable expenses fairly incurred in the discharge of these duties, but he cannot charge for personal trouble, labour, and loss of time; nor can he, at the cost of the estate, employ an agent or collector to get in the debts, except in cases where this would be done by a provident man in the management of his own business or property. But if an executor or administrator borrow money, or advance it out of his own pocket, to pay debts of the testator which bear interest, or to prevent importunate creditors bringing actions, he will be allowed interest on the money thus advanced.

CHAPTER XVII.

THE LEGAL REMEDIES FOR OR AGAINST EXECUTORS AND ADMINISTRATORS.

EXECUTORS and administrators may sue or be sued, either at law or in equity, for debts due to or from the testator's or intestate's estate, and may bring or have actions at law brought against them for damages, in the same manner as if they were acting on their own behalf in their own affairs. They are, however, privileged from arrest under a judgment obtained against them, unless they have personally promised to pay the demand, or unless they have been guilty of a *devastavit*. But in every case in which they bring or suffer an action to be brought against them, they will be personally liable for the costs of the other party if he succeeds, and may be arrested if they do not pay them. We have already stated in a previous chapter that they may successfully defend themselves against a claim which they have not the means to meet by pleading that they have fully administered all the effects of the testator which have come into their hands, or all except such as are needed to pay debts having priority over those of the plaintiff.

Executors can only sue each other in Chancery if disputes arise between them in the administration of the estate.

Nor, as a general rule, can any action at law be brought to recover a legacy or a share of an intestate's estate. The legatee must file a bill in Chancery.

There are, however, two exceptions to this. If the executor have assented to a specific legacy, then, whatever its value, the legatee may bring an action at law to compel the executor to deliver it. And if the legacy, or the amount of the share in an intestate's estate, do not exceed in amount 50*l.*, proceedings to recover it may be taken in the County Court.

If the creditors or legatees have reason to be dissatisfied with the mode in which an executor is conducting the administration of the estate, they may, by a summary proceeding before one of the judges of the Court of Chancery, compel the executor to render an account of his dealings, and have the estate in future administered under the direction of the court. An executor may also take this step for his own protection, if he find that the administration is beset with legal difficulties, and is likely to involve extraordinary responsibilities. And if such proceedings in the Court of Chancery, whether taken by the creditors, legatees or executors, have not been rendered necessary by the ignorance, negligence, misbehaviour or undue caution of the executor, the costs which they may entail on him will be defrayed out of the estate, upon which indeed they will become the first charge. On the contrary, if the conduct of the executor has been marked by fraud or evasion, the court will not only compel him to pay his own costs, but also so much of those of other parties, as may have been entailed by his breach of duty.

APPENDIX.

LIST OF FORMS.

APPENDIX.

THE following collection of forms contains in the first place several complete precedents of whole wills, which it is believed are adapted to the cases most likely to occur in practice. They are, moreover, so framed as to admit of modifications either by the omission of clauses, which may not be applicable in any particular instance, or by the insertion of additional legacies, or of any of the numerous special provisions which will be found in the subsequent portion of the Appendix. And as it is impossible to provide by anticipation a will which may suit each case, we have also furnished, in a very copious collection of separate provisions—including numerous forms of legacies, the means by which any person may readily effect such changes as he may wish, or by which an entirely new will may be drawn up. In preparing a will the testator must consider whether the circumstances of the case render it necessary or advisable to constitute his executors trustees of the will. As we explained in Chapter VIII. it will be desirable to do so, if the whole or the bulk of his property is to be divided amongst minors. In that case he must begin with the usual commencement to a will; insert any directions he may wish to give as to his funeral (No. 19); leave what legacies he intends to give (No. 20); then insert No. 21 of the legacies, bequeathing the residue of his estate to trustees; follow that by one or more of the six subsequent forms which "declare the trust" (in other words, say how the trustees are to dispose of the property), and with such of the provisions which will be found in the Appendix, as it may be thought

desirable to adopt; with respect particularly to the maintenance and advancement of the infant legatees, to the cessation of the widow's interest in the income of the trust fund if she marry again, to the indemnity of the trustees, and to the appointment of new trustees. Forms 30 to 33 should also each be looked at, and such of them as the testator thinks proper may be adopted. The will must conclude with a formal appointment of the trustees to be executors of the will. If, on the other hand, there is no prospect of a long administration of the estate during the minority of infants, and there is no necessity to appoint trustees, the testator should commence as before: insert directions as to funeral and legacies; add one of the forms of residuary bequest (see forms of legacies), and any of the provisions from 30 to 33 which may suit the case; concluding with the appointment of executors. In either case, also, the testator may adopt any of the provisions which he may find in the forms of wills. By attending carefully to these directions, we cannot but indulge the hope that, in any case in which no very complicated disposition of property is intended, a testator may readily prepare a will for himself. As we have before stated in the body of the work, when the will is of a very complicated character, and especially when it provides for a number of persons taking property in succession, or under conditions, it would be the height of folly and the most absurd false economy to dispense with professional assistance.

I.

Attestation Clause when the Testator signs.

Signed by the said testator, as his last will and testament, in the presence of us, present at the same time, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses.

A. B., of &c. [*residence*].
C. D., of &c. [*residence*].

II.

Attestation Clause when another Person signs by his Direction.

Signed by [*name, description and addition of the person signing for the testator*], as the last will and testament of the said testator, in his presence and by his direction, in the presence of us, present at the same time, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses.

E. F., of &c.
G. H., of &c.

III.

Will by which a Testator gives the whole of his Property to his Wife, whom he also appoints his sole Executrix.

I, A. B., of &c., declare this to be my last will and testament. I do hereby give unto my dear wife [*name*] all my real and personal estate whatever and wheresoever, to hold unto her, her heirs, executors and administrators, according to the respective natures and qualities of the said premises, absolutely and for ever. And I hereby appoint my said wife sole executrix of this my will, at the same time revoking all former and other wills, codicils, testamentary dispositions and appointments whatsoever by me at any time heretofore made. In witness whereof I have hereunder set my hand, this day of in the year of our Lord .

[Testator's signature, or that of the person signing for him.]

[Attestation clause, signed by two witnesses.]

IV.

Will giving to one absolutely all the Testator's Real and Personal Estate.

This is the last will and testament of me [*testator's name*

and description]. I devise and bequeath all the real and personal estate to which I shall be entitled at the time of my decease unto [*devisee's name, description and addition*] absolutely, and I appoint the said [*name*] sole executor of this my will, hereby revoking all former testamentary writings. In witness whereof I have hereunder set my hand, this day of , in the year of our Lord .

[Testator's signature or signature of person signing for him.]

[Attestation clause, signed by two witnesses.]*

V.

Will of a married Woman disposing of Real and Personal Estate in Favour of her Husband absolutely (subject to pecuniary Legacies), with an Expression of her Confidence that he will leave the Property to her Relations.

This is the last will and testament of me [*testatrix's name*], the wife of [*husband's name and description*]. I give all the real and personal estate of which, by virtue of any power or authority, or of any separate right of property or otherwise, I am competent to dispose, unto my said husband, for his absolute use, subject to the payment thereout of the pecuniary legacies bequeathed by this my will, and to be bequeathed by any codicil thereto [together with the legacy duty and expenses incident to the receipt of such legacies †]. Trusting that my said husband will at his death distribute my said real and personal estate among my brothers and sisters and their issue; but this expres-

* We shall not, in the following forms, repeat the directions with respect to the signature, attestation clause, &c. It must be understood that from the words "in witness, &c.," all wills run alike, that each must be signed as in the last two forms, and must have, according to circumstances, one of the two forms of attestation clause which we have given above.

† This clause may be omitted if it is thought desirable.

sion of my confidence shall not abridge his absolute ownership or create any equity in their favour. I bequeath the legacies following (namely):—To each of my brothers and sisters *l.*, to be paid at the end of six calendar months after my death; to each of my nephews who shall attain the age of twenty-one years, and to each of my nieces who shall attain that age, or marry, *l.*, to be paid at the end of six calendar months after they shall respectively become objects of this bequest; and to my servant [*name*], if she shall continue in my service till my death, *l.*, to be paid immediately after my death. And I appoint my said husband sole executor of my will. In witness, &c.

VI.

Will devising Real and Personal Estate to Trustees who are directed to sell the same, invest the Proceeds, pay the annual Income to Testator's Wife during Widowhood, and after her Death or future Marriage, then to divide capital Sum amongst the Testator's Children (their respective Shares being payable to the Sons on attaining 21, and to the Daughters on attaining that Age or marrying); Provisions for the Maintenance and Advancement of Children, and requisite Power to Trustees to give Receipts, compound Debts, refer to Arbitration, &c.

I, A. B., of &c., hereby declare this to be my last will and testament. I give all my real and personal estate unto C. D. and E. F., their heirs, executors and administrators, upon trust, to sell and convert into money such real and personal estate, and to invest the sum or sums of money thus arising in the names of my said trustees in or upon the public stocks, funds or securities of the United Kingdom, or any real securities in the United Kingdom, and to vary the investment from time to time for any other of like nature. And to pay the annual income thereof to my dear wife [*name*], during her life, if she shall so long

continue my widow; and after her decease or second marriage, then, as to the said trust fund and the yearly produce thereof, upon trust for all my children who, being sons, shall attain the age of twenty-one years, or, being daughters, shall attain that age or marry, in equal shares. And I authorize my said trustees or trustee, at any time after the decease or second marriage of my said wife, to apply the whole or part of the income of the presumptive share or shares of any child or children of mine who, being a son or sons, shall be under the age of twenty-one years, or, being a daughter or daughters, shall be under that age and unmarried, towards his, her or their maintenance and education. And also to advance any part of such presumptive shares [not exceeding one-half thereof]* towards the advancement in life of any such children respectively. And I hereby authorize my said trustees or trustee to release or compound any debts owing to me or to my estate, or to give time for payment, or to take such security for payment, and to adjust and pay all claims made upon my estate, whether the same shall be supported by legal evidence or not, and also to refer to arbitration any dispute respecting any debt claimed to be owing to or from me, and generally to act in the premises as my said trustees or trustee shall in their or his discretion think fit; and all receipts given by my said trustees or trustee, acting in the execution of the trusts herein contained, shall exonerate the parties taking the same from all responsibility with respect to the application of the moneys therein expressed to be received. And I hereby authorize the acting trustees or trustee of this my will, and the executors or administrators of the last acting trustee, by any instrument in writing, to substitute any person to be a trustee in the stead of any trustee who shall die, continue to reside abroad, disclaim, neglect, refuse or become incapable to act in the trusts aforesaid, and all the said trust estates or premises shall forthwith be transferred, so

* A different proportion, as one-third or three-fourths, may be inserted, or in lieu of the words in brackets, it may be said, "or the ·le thereof."

as to vest the same in such new trustee or trustees, either jointly with the surviving or continuing trustee or trustees, or solely, as the case may be, and such new trustee, as well before as after such transfer, shall have the same powers as if originally appointed a trustee by this my will. And I declare that the trustees for the time being of this my will shall respectively be chargeable only with such moneys as they respectively shall actually receive, and shall not be answerable for each other, nor for any banker, broker, or other person in whose hands any of the trust funds shall be placed, nor for the insufficiency or deficiency of any stocks, funds, shares or securities, nor otherwise, for involuntary losses. And I appoint the said C. D. and E. F. to be executors of this my will. In witness, &c.

VII.

Will bequeathing Personal Property amongst Children, one being an Adult and the others Minors. The Share of the first to be paid at once; those of the others on their attaining 21, *the Interest being in the meantime devoted to their Maintenance.*

I, A. B., of &c., declare this to be my last will and testament. I appoint C. D. and E. F. the trustees and executors of this my will. And I direct the said C. D. and E. F., or the survivor of them, his executors or administrators, to convert my personal estate and effects into money as soon as may be after my death, and, after payment thereout of my just debts, to divide the residue into equal shares. I direct them to pay one of the said portions forthwith to my eldest son G. H.; and as to the other shares, I direct my said trustees to hold the same upon trust, to pay one share to each of my younger children [*naming them*] on their attaining the age of twenty-one years; or if daughters attaining that age, or marrying, and in the meantime to invest the moneys forming such shares upon such securities, real or personal, or otherwise, as my said trustees or trustee may think proper, and apply

the annual income arising therefrom towards the support and education of my said younger children during their respective minorities, as my said trustees shall deem most advantageous for them: and in case any of my said trustees shall die, retire from office, or become incapable of acting in the execution of the trusts of this my will, then I declare that it shall be lawful for the surviving or continuing trustee, or the executors or administrators of the last-acting trustee, by any instrument in writing, to appoint any trustee or trustees to such vacant trusteeship, which new trustee or trustees, when so appointed, shall have the same powers and authorities as if originally appointed a trustee or trustees by this my will. In witness, &c.

VIII.

Will of a Tradesman, Legacies to Children, Wife to carry on Business and manage Estate during her Widowhood; but if she marries again to have an Annuity. On Wife's Death or Marriage, Property vested in Trustees for Benefit of Children.

This is the last will and testament of me [*testator's name*]. I give to each of my children, who, being a son, shall at my death have attained the age of twenty-one, or shall afterwards attain that age, or, being a daughter, shall at my death have attained that age, or have married, or shall afterwards attain that age, or marry, a portion of *l.* I authorize my wife to carry on my business of a , and for that purpose to continue tenant of the premises which I shall use at my decease, or to take others which she may think more convenient, and to employ in the said business such portion of my personal estate as she shall deem fit. And I further authorize her to transfer the said business to one or more of my sons, or to admit one or more of them to a share in it, and to lend him or them such capital as may be necessary for carrying it on. I empower my wife to manage my personal estate generally, in such a

manner as shall appear to her to be most advantageous to my family, investing the proceeds in her name, and varying the investment or investments when and as she shall think fit (the real property so purchased to be convertible into and treated as personalty for all the purposes of my will). I give my wife all the income derived from the said business, and from the residue of my personal estate; but charged with the maintenance, education and bringing up in a manner suitable to the station in life of my sons for the time being, under the age of twenty-one years, and my daughters for the time being under that age, not being or having been married. In the event of my wife marrying again, I thenceforth annul the powers and benefits hereinbefore given to her, and give her an annuity of *l.*, during the remainder of her life, payable quarterly into her proper hands, and to her sole and separate use. And I direct that the first payment of the said annuity shall be made at the expiration of three months from the day on which she shall account for and deliver up my personal estate in her hands to the other trustees of my will to their satisfaction; but such annuity to cease if my said wife should attempt to alienate or incumber it, or any part of it. And I declare that on the death or marriage of my wife, my business of a , and my personal estate, shall vest in the other trustees or trustee of my will, who shall have the same powers with respect to the management of the said business, and the investment and application of the said estate as I have before given to my wife, and shall hold the said personal estate from and after the death or marriage of my wife [in trust for all my children, who, being sons, shall attain the age of twenty-one years; or who, being daughters, shall attain that age or marry, in equal shares. And I authorize my said trustees or trustee, at any time after the decease or second marriage of my said wife, to apply the whole or any part of the income of the presumptive share or shares of any child or children of mine, who, being a son or sons, shall be under the age of twenty-one years, or, being a daughter or daughters, shall be under that age, and unmarried,

towards his, her or their maintenance and education. And also to advance any part of such presumptive shares, not exceeding one-half thereof, towards the advancement in life of any such children respectively. I appoint my said wife, during widowhood and on her death (or if she shall marry again, then on her marriage), my friends [*names*], to the office of executor and trustee of my will, and guardian of my infant children, with full power to compound and compromise debts and claims, and settle my accounts and affairs, and to give receipts for moneys paid or accounted for to my estate by purchasers or others, who shall be exonerated by such receipts from all liability in respect of the application of the money. And I direct, so far as concerns the trusteeship of my said friends, that vacancies occurring therein from death in my lifetime, or otherwise from disclaimer, or incapacity, shall, from time to time, be supplied by the other trustees or trustee for the time being, or if none such, then by the disclaiming or resigning trustees or trustee, or if also none such, by the executors or administrators of the last deceased trustee. And I declare that as well my said wife, as the other trustees or trustee of this my will, shall be chargeable only to the extent of her, his or their respective actual receipts, and be exempt from responsibility for involuntary losses, and be entitled to retain all disbursements and expenses incident to the exactions of my will]. In witness, &c.

IX.

Another Form directing Business to be carried on by the Widow until one of the Sons attains the Age of 21. *If none of them will take it, it is then to be sold. In Case of Widow's second Marriage, the Trustees are to manage. A Portion of the Profits given to Widow absolutely while she remains unmarried; the remainder to be applied to the Education and Maintenance of the Children.*

This is the last and only will and testament of me A. B., of &c. I hereby appoint C. D. and E. F. to be

trustees of this my will. I desire to be buried in a private manner, and that the expenses of my funeral shall not exceed the sum of · *l.* I give and bequeath to my dear wife the sum of *l.* sterling, to be paid to her immediately upon my decease. I also give and bequeath unto my said wife absolutely all her paraphernalia, wearing apparel and linen, together with the watch and all rings, trinkets, jewels and ornaments of the person usually worn by or reported to belong to her. I also give and bequeath unto my said wife all my household furniture, plate, china, glass, linen, books, wine and other liquors, fuel and other housekeeping provisions. And I hereby direct that my business of a shall be carried on by my said trustees or trustee, upon the same premises whereon the same is now conducted, under the sole management of my said wife, provided she so long continues my widow, until my eldest son, and in case of his refusal some other of my sons, shall attain the age of twenty-one years and undertake the management thereof, or neglect or refuse so to do. And I authorize my said wife to perform all such acts respecting my said business as I myself could have done if living, without being responsible for any loss that may be therein incurred. And in case my eldest son on attaining twenty-one, or all my said children on attaining that age, shall refuse to undertake my said business, then my said trustees or trustee shall sell the same thereof, together with the messuage, shop, warehouses, and other buildings thereunto belonging, at such price as my said trustees or trustee shall consider reasonable, and after deducting the expense of sale shall stand possessed of the purchase-money upon the trusts hereinafter declared, and I hereby direct that my eldest or some one of my sons shall be employed in the management of my said business, for the purpose of learning and getting an insight into the same. And I hereby authorize my said trustees or trustee to increase, abridge or wholly to discontinue my said business, in case the same seems likely to prove an unprofitable concern, as my said trustees or trustee may consider most advantageous. I also direct

that all rates and taxes whatsoever, payable in respect of the premises whereon my said business shall be carried on, or upon the profits of my said trade, shall be charged to the account of the said business, and that the nett profits thereof shall be applied as follows (that is to say): equal (3rd, 4th, 5th) parts shall go to my said wife absolutely, for her own use, and the remaining (*insert the shares*) shall be received and applied by her in the maintenance and education of my children in such a manner as she may think proper, without my said trustees or trustee being in anywise responsible for the application thereof. And I hereby further direct, that if my eldest son upon attaining twenty-one, or in case of his neglecting so to do, any other one of my sons on attaining that age, shall give notice in writing to my said trustees or trustee of his desire to undertake the management of my said business, my said trustees or trustee shall cause the same, together with the stock in trade, and the premises whereon the same shall be carried on, to be appraised, and my said son so desirous of conducting the said business shall have the option of purchasing the same, together with the stock in trade, and premises whereon the same shall be carried on, which shall be transferred and conveyed to him upon his entering into a bond on a penalty of double the amount of such valuation, conditional to pay such valuation by half-yearly instalments, until the whole shall be paid off. Provided always, that in the case of the death or second marriage of my said wife before any of my said sons shall attain twenty-one, and be desirous of carrying on my said business, then I direct that the same shall be carried on by my said trustees or trustee until some one of my said sons shall attain twenty-one, and elect to carry on my said business, or all of them on attaining that age shall, respectively, neglect or refuse so to do; and that my said trustees shall have the same powers in the management thereof as are hereinbefore conferred upon my said wife. And I direct that my said trustees or trustee shall receive the profits during the interval between the death or second marriage of my said wife, and the

sale of my said business, stock in trade and premises, and that such profits shall form part of my general residuary estate. And I bequeath all the residue of my estate, including any sums which may be derived from the sale of my said business to my said trustees in trust, &c. [*here insert from the last form the clauses enclosed in brackets, directing the division of trust funds amongst children, giving the trustees power to compound debts and exonerating them from liability for involuntary losses.*]

X.

Will bequeathing several Legacies, and appointing a Residuary Legatee.

I, A. B., of &c., declare this to be my last will and testament. I bequeath to my wife, C. D., all the fixtures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, chattels and effects (other than money or securities for money), which shall at my death be in or about my dwelling-house, or the out-buildings or grounds thereof. I bequeath to my said wife the sum of *l.*; to be paid to her within one calendar month without interest. I also give and bequeath to my said wife the sum of *l.** I also bequeath the following legacies to the several persons hereafter named. I give and bequeath to my nephew, E. F., the sum of *l.* I give and bequeath to my cousin, G. H., the sum of *l.* I give and bequeath to my friend, J. K., the sum of *l.* [*And so on with other pecuniary legacies.*] I also bequeath to each of my domestic servants who shall be living with me at the time of my death in the capacity of [*state the description of servants to whom the legacies are to be*

* The object of leaving two legacies to the wife is this. The executor will probably be able to ascertain in a very short time whether the estate be solvent, and may then have the means of paying the wife a small sum for current expenses (the first legacy should be limited to this), although he might not be able to pay the second, which is intended as the permanent provision for the wife.

given] one year's wages, in addition to what may be due to them at that time. And I direct that my executors shall supply each of my domestic servants, both male and female, who shall be living with me at the time of my decease, with a suit of mourning becoming their respective positions. I bequeath to each of the several persons hereinafter named, during his or her natural life, the following annuities:—An annuity of *l.* to L. M.; an annuity of *l.* to N. O.; and an annuity of *l.* to P. Q.; which several annuities shall commence from my death, and be paid quarterly without deduction. And I direct my executors to purchase and set apart, within twelve calendar months after my death, in their names, sufficient funds in the Consolidated and Reduced Three per Cent. Stocks, or in one of those stocks, and in the meantime to pay the said annuities out of the said residue. And as to all the rest, residue and remainder of my real and personal estate (inclusive of the funds to be set apart pursuant to the above direction, when and as the respective annuities payable thereout shall drop), I devise and bequeath the same unto R. S., his heirs, executors, administrators and assigns, absolutely for ever. And I appoint T. U. and V. W. executors of this my will. In witness,* &c.

XI.

Will giving Freehold House or Land to the eldest Son, and directing the Personalty to be divided amongst the younger Children (Adults).

I, A. B., of &c., declare this to be my last will and testament. I give and devise all that messuage or dwelling-

* This will serve very well as a general skeleton for a will where legacies of a fixed amount, followed by a residuary bequest, are left. The legacies may be varied at pleasure with the aid of "the common forms," where will be found other provisions for securing the payment of the annuities in a different mode.

house, &c. [*insert description of the property*] unto my eldest son, C. D., and his heirs for ever. And I hereby declare that no wife of my said son shall be entitled to dower out of the said hereditaments and premises. And as to my personal estate and effects, I direct that they shall, as soon as conveniently may be after my death, be sold by my executors, and after payment out of the proceeds thereof of my debts and funeral expenses, I direct my said executors to divide the residue equally amongst my younger children. And I appoint E. F. and G. H. executors of this my will. In witness, &c.

XII.

Will giving Freehold House or Land to the eldest Son, and directing the Personalty to be divided amongst the younger Children (Infants).

Copy the previous form down to the words "hereditaments and premises," then proceed. And as to my personal estate and effects, I bequeath the same (after payment thereout of my debts and funeral expenses) to E. F. and G. H., their executors and administrators, upon trust to sell and convert into money, such part of my personal estate as shall not consist of money, and to invest the proceeds of such sale in the names of the said trustees, in or upon the public stocks, funds or securities of the United Kingdom, or any real securities in the United Kingdom, and to vary the investment from time to time. And as to the said trust fund, and the yearly produce thenceforth to accrue due from the same, upon trust for all my younger children, who, being sons, shall attain the age of twenty-one years, or, being daughters, shall attain that age or marry, in equal shares. And I authorize my said trustees or trustee to apply the whole or part of the income of the presumptive share or shares, &c. [*From this point copy the latter end of Form VI. to the end.*]

XIII.

Will of a Person in Business whereby he gives his Share in a Partnership Concern to one of his Sons, and appoints him to act as his special Executor in regard to the Business.

I, A. B., of &c., declare this to be my last will and testament. Whereas, under certain articles of agreement dated , I am now carrying on the trade or business of a , in partnership with , under the firm of Messrs. ; and whereas under the said articles I am entitled to one share in the said business, in the good-will thereof, and in the stock in trade, and other effects belonging to the said partnership firm, and have power to appoint a successor to myself in the said business; now in pursuance and execution of the power given to me under the said articles of co-partnership, and of any other right or power possessed by me in this behalf, I nominate and appoint my son to be my successor in the said co-partnership business. And I hereby give to and vest in him all rights, powers and privileges which I am in anywise enabled to confer upon him as my successor in the said business. And I bequeath to my said son all my interest or share in the said partnership business, in the good-will thereof, and in any real or personal estate belonging to the said partnership firm. And I hereby appoint my said son [*name*] to be my special executor in regard to the partnership affairs or estate, over which I expressly direct that my general executors shall have no control whatever. [*Then may follow the general will.*]

XIV.

Will bequeathing pecuniary Legacies, and also a Freehold House or Plot of Freehold Land, with a Direction that if the Personalty shall not be sufficient to pay the Legacies, they shall be charged upon the Real Estate.

I, A. B., of &c., declare this to be my last will and tes-

tament. I hereby give and bequeath the sum of *l.* to my friend C. D. I give to each of my nephews and nieces the sum of *l.* I give the residue of my personal estate, should there be any after the payment of the said legacies, together with my debts and funeral expenses, to my cousin E. F. I also devise to my brother G. H. and his heirs my freehold house, situate No. in Street, in the town of , in the county of . I further devise to my brother I. K. and his heirs my plot of freehold land, situate at , forming part of the estate of the Freehold Land Society, and numbered No. on the said Society's plan of the said estate; and in case either of my said brothers should die in my lifetime, then I devise the said house and the said plot of freehold land to the heirs of my said brothers respectively. And my will is, and I hereby direct, that in case my personal estate shall be insufficient for the purpose of the payment of my debts, funeral and testamentary expenses, and legacies, or such other sum and sums of money or charges as I may give by this my will, or any codicils annexed thereto, that all and singular my freehold house or houses, and lands, shall be charged with the payment thereof, in aid of my said personal estate. And I hereby authorize my executors, if and when he or they shall think fit, by sale or mortgage of my said freehold house or houses, and lands, or a competent part thereof, or out of the rents and profits thereof in the meantime, or by all or any of the said ways and means, to raise all such sum and sums of money as may be necessary to make good the deficiency of my personal estate. And I hereby declare that the receipt or receipts of my said executors shall be an effectual discharge of so much money as therein shall be expressed to have been received, and the person or persons paying the same shall not be obliged to see to the application thereof, or to inquire into the necessity or expediency of any such sale or sales, or whether my personal estate shall have been gotten in or applied for the purposes of my will, or whether the same shall or shall not have proved insufficient for all or any of the pur-

poses aforesaid. And I hereby expressly authorize and empower my said executors to raise, by all the ways and means as aforesaid, such sum or sums of money as they or he may think proper, although my personal estate and effects shall not actually have been gotten in and applied for the purposes of this my will. And I appoint L. M. and N. O. executors of this my will. In witness, &c.

XV.

Will of a married Woman, who, under a Power conferred upon her by her Marriage Settlement, directs the annual Income of her Property to be paid to her Husband during his Life, and at his Death the Fund itself to be distributed equally amongst her Children and the Issue of deceased Children.

I, A. B., of &c., the wife of C. D., &c., hereby declare this to be my last will and testament. Whereas by an indenture bearing date the day of , made between of the one part, and of the other, being the settlement made in contemplation of my marriage with my said husband, the sum of *l.* (stock in the Three per Cent. Consolidated Annuities)* was settled in trust for my separate use for life, and after my death in trust for my children, and the issue of any deceased child or children who might be living at my death, in such parts and shares as I might appoint by my last will [with a further power to direct that the dividends and interest of the said trust fund should be paid to my husband for his life]. Now, therefore, in exercise of the powers given me by the said settlement, I do hereby direct and appoint that [the trustees or trustee for the time being, under the said indenture of settlement, shall after my decease stand possessed thereof in trust to pay the annual income thereof to my husband during his life. And from and after his decease

* If this is not so, specify the mode in which the settled property is invested at the time of the will.

I direct that] the said trust fund, under the said settlement, shall be and remain in trust for all and every my child or children as shall survive me, and attain the age of twenty-one years, or leave issue, or being a daughter or daughters attain that age, or marry, and such child or children of any child or children of mine dying before me as shall survive me, and attain the age of twenty-one years, or leave issue, or being a girl or girls attain that age, or marry, in equal shares, as amongst brothers and sisters. But so that the child or the children collectively of any deceased child of mine shall take only the share which such deceased child would have taken if living, and as to the share or shares of any girl or girls for her or their separate use, without power of disposing of the income or capital thereof otherwise than by will. And I hereby direct that during such time as any child or grandchild of mine shall be presumptively entitled to any share of the trust moneys hereby appointed, the interest and dividends of his or her share may be applied at the discretion of the trustees of the said settlement for his or her maintenance, education or advancement. In witness, &c. *

XVI.

Appointment of Executors with Legacies.

I appoint the said A. B. and C. D. executors of my will, and I give them the sum of *l.* each in consideration of the trouble they will have in the execution of their office.

XVII.

Wife to be Executor and Trustee only during Widowhood.

I appoint my wife [*name*] and A. B. and C. D. to be

* This will apply to the case of all ordinary marriage settlements. If the wife has no power to direct the income to be paid to her husband during his lifetime, or does not wish to exercise it, omit the clauses in brackets.

executors and trustees of my will; but if my wife should marry again, she shall thereupon cease to be an executor and trustee of my will, which shall thenceforth take effect, and be executed in the same or in like manner as if the said A. B. and C. D. had been originally appointed the sole trustees and executors.

XVIII.

Appointment of Guardians of Children.

I appoint my wife to be guardian of my children during her widowhood. I also appoint A. B. and C. D. to be executors of my will, and, after the decease or marriage of my wife, to be guardians of my children.

XIX.

Directions respecting Funeral.

I direct that my remains be interred with as much privacy as possible in my vault in [*name of church or chapel*].

Or,

I direct that my funeral shall be conducted with as much privacy as possible.

Or,

I direct that the expense of my funeral shall not exceed *l.*

XX.

Legacies.

1. *Bequest of wearing Apparel.*—I bequeath my wearing apparel to my faithful servant , if (he *or* she) should be living in my service at the time of my decease.

2. *Of furniture, &c.*—I give and bequeath to [*name*] all the household furniture, books, works of art, and other hattels and effects, together with wines, liquors, fuel,

housekeeping provisions and other consumable stores, which shall at my decease be in or about my dwelling-house.*

3. *Of Dress and Ornaments to Wife.*—I give and bequeath to my wife absolutely all her paraphernalia, wearing apparel and linen, and the watches, rings, trinkets, jewels and personal ornaments usually worn by her, or reputed to belong to her.

4. *Of Furniture, &c., to Wife, during Life or Widowhood.* I give and bequeath to my wife during her life, and so long as she shall remain a widow, the use of all my household furniture, plate, linen, china, glass, works of art, musical instruments, and other chattels and effects of the like nature, which shall at my decease be in or about my dwelling-house.†

5. *Of Furniture to be divided amongst Children.*—I bequeath to my children who shall be living at the time of my death all wearing apparel, household furniture, linen, china, plate and other household goods; all the books and works of art, and all the wine, liquor, fuel, and other consumable stores of which I shall be possessed at the time of my death, equally to be divided between them; and if any dispute should arise with respect to the division, I

* This bequest would include everything likely to be in the testator's house at the time of the decease. It may be easily limited, by striking out the class which it is desired to except, or by adding, "except so and so," naming the article described, as for instance—"the rosewood sofa in the drawing-room." The most usual exception to a bequest of this kind, and indeed it is one that should generally be inserted is, "except money and securities for money, evidences and documents of title, and accounts and vouchers."

† This bequest must be followed by a clause directing what is to be done with the furniture after the wife's death, thus:—"And after her decease or re-marriage, I give and bequeath the same to (*name*) absolutely if (he *or* she) should be living at the decease or re-marriage of my wife, but if (he *or* she) should be dead, then to" (*several parties may here be named in succession*), or in case the will has directed the testator's property to be sold, and the proceeds divided amongst his children, "and after her decease or re-marriage, I direct my executors and trustees to sell the same, and add the proceeds to the trust fund, under this my will."

authorize my executors to distribute the said effects equally amongst my said children.

6. *Of Stock in the Funds, Stock of the Bank of England or East India Company, and of Shares.*—I bequeath to A. B. absolutely all sums of money of which I shall die possessed in the public stocks or funds, or other Government securities of Great Britain, also all my stock of the Bank of England and East India Company, and all my shares or stock of any public company duly incorporated under any private or public Act of Parliament.

7. *Of a Bond Debt.*—I bequeath to A. B. the sum of *l.*, now owing to me upon the bond of C. D., and all interest thereupon which may happen to be owing to me at the time of my decease.

8. *Of a Debt.*—I bequeath to A. B. any debt which, at the time of my decease, shall be owing from him to me, together with any interest then due thereupon.

9. *Of a Share under another Person's Will.*—And whereas under the will of [*name*], I am entitled to a third share in his residuary personal estate, I bequeath the said share to [*name*].

10. *Of a weekly Allowance to a Person.**—I direct my trustees for the time being to purchase the sum of *l.* stock in the Three per Cent. Consolidated Annuities, and to pay out of the dividends thereon the weekly allowance of to A. B. until his death, or until he shall become bankrupt or insolvent, or do or suffer something whereby the same, if belonging absolutely to him, might become vested in or payable to some other person or persons; and after the determination by any means of the interest of the said A. B. in such stock or dividend, I direct that the said fund shall [*state what is to be done with the fund, as* "form part of my residuary personal estate," *or* "become part of the general trust funds under this my will," *or* "shall be held by my trustees on trust, to apply the dividends and interest of the said fund to the maintenance

* This is a very useful form where the testator has a spendthrift son, with a deserving wife and young family. As it is drawn, he cannot by any means deprive his family of the provisions hereby made for them.

of the wife and children of the said A. B., and, after his death, to divide the said fund equally amongst such of his children as, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry."]

11. *Bequest of an Annuity (to be purchased for the Annuitant).*—I bequeath to A. B. an annuity of *l.* during her life, clear of legacy duty, and all other incidental expenses and deductions [*if the annuitant is a married woman, say also* "for her sole and separate use"], and I direct my said trustees to purchase such annuity in the name of the said A. B., either from the Government or from one or other of the following insurance companies [*naming three or four of the well-established companies*]: Provided always, and I hereby direct, that the said A. B. shall not be entitled to receive the value of the said annuity in lieu thereof.

12. *Bequest to his Mother of any Allowance which the Testator may have made during his Lifetime (with a Proviso for increasing it if she should be deprived of any other which she enjoyed at the Time of making the Will).*—I direct my trustees to set apart a sufficient portion of the trust fund under this my will to pay to my mother an annuity of *l.* during her life, clear of legacy duty, by equal quarterly payments, on the usual quarter days [*other days may be substituted if wished*], the first payment to be made on the first of such days which shall happen after my death. And in case the allowance of *l.* per annum, which my mother now receives from C. D., should at any time be reduced or cease, then I direct that my said trustees shall, if they have sufficient funds in their hands, set apart such an additional sum as will enable them to increase the annuity hereby left to my mother to the sum of *l.*

13. *Legacy for Wife's immediate Use.*—I give and bequeath to my dear wife, A. B., the sum of *l.*, to be paid to her by my executors hereinafter named within days after my death for her immediate occasions; and I direct that this legacy shall not be subject to abatement.

14. *Legacies to Friends for mourning Rings.*—I bequeath to each of my friends (*names*) the sum of *l.* each for the purchase of mourning rings.

15. *Legacies to Clerks.*—I bequeath to such of my clerks as shall be in my employment at the time of my death, the sum of *l.* apiece, to be paid at the end of calendar months after my decease.

16. *Legacies to Servants.*—I bequeath to each of my domestic servants who shall be in my service at the time of my decease, in the capacity of [*state the kind of servants whom it is desired to benefit*], having then been in my service for not less than two years, the sum of *l.* [*or* "the amount of one *or* two years' wages" *as the case may be*] in addition to any wages owing to such servant. And I also direct my executors to provide for all my domestic servants such mourning as they shall think fitting.

17. *Pecuniary Legacy to an Adult.*—I bequeath *l.* to A. B.

[It may be desirable to remark, with reference to the gift of *all* pecuniary legacies, that if the legatee is related to the testator, the fact of the relationship should be stated, as "to my son A. B.," "my brother C. D.," "my uncle E. F.," &c., as the legacy is liable, as we have seen, to a less duty in proportion to the nearness of this relationship, and the statement made in the will is always received as evidence thereof at the Stamp Office.]

18. *Pecuniary Legacy to a Minor (a Male).*—I bequeath to A. B. the sum of *l.* sterling, to be vested in and payable to him upon attaining the age of 21 years ["but without any interest in the meantime," *or* "with interest thereupon at the rate of four per cent. per annum]."

19. *Pecuniary Legacy to a Minor (a Female).*—I bequeath to C. D. the sum of *l.*, to be vested in and payable to her for her sole and separate use upon attaining the age of 21 years or marrying [*add a similar clause as to interest*].

20. *Pecuniary Legacy to a married Woman.*—I bequeath to A. B., wife of C. D., the sum of *l.* And I declare that the said sum of *l.* shall be for her sole and

separate use and benefit, and that her receipt, notwithstanding her present or any future coverture,* shall be a valid and effectual discharge of the same.

21. *Bequest of Legacy, and if Legatee die in Testator's Lifetime, then to his Issue.*—I bequeath *l.* to A. B., if he shall be living at the time of my death, and if he shall die in my lifetime leaving issue living at my death, then I bequeath the said legacy of *l.* unto such issue of the said A. B. as shall be living at my decease, and shall attain the age of 21 years, or marry, in equal shares, as between brothers and sisters, but so that the child or children of any deceased child shall only take such share as his, her or their parent would have taken if living.

22. *Legacies to Infants, with Power to the Trustees or Executors to pay the same to the Father or Mother for the Benefit of such Infant Legatees, or so to apply it themselves.*—I give to each of the children of A. B. the sum of *l.* And I authorize my trustees or trustee, executors or executor, for the time being, in their discretion, to pay to the father, or, if he is dead, to the mother of such of the said children, or if males are under 21 years of age, or if females under that age and unmarried, the amount of these respective legacies, to be applied by such father or mother for their benefit. And if there be no father or mother living, then I authorize the said trustees or trustee, executors or executor, so to apply the legacies for the benefit of the said children if they should deem it desirable.

23. *Legacies to Infants, with Power to Trustees or Executors to apply the Capital or Interest thereof to the Maintenance or Advancement of the Legatees.*—I bequeath unto each of my nephews and nieces,† who shall attain the age of 21 years,

* Marriage.

† Any other relatives may be inserted, or if the legatees are not relatives, say "to each of the children of A. B," making corresponding alterations throughout the clauses. This form applies to the case when legacies of a fixed amount are left to minors. Clauses applicable to the case of the division of a fund amongst them will be found in form 32. In that case the legatees are the children of the testator, but the form may be easily varied, so as to apply to infants who stand to him in a different degree of relationship, or are not relations at all.

or as to nieces marrying under that age, the sum of *l.*, and I direct my trustees and executors, for the time being, to invest the presumptive legacies of such of the said legatees as are under age, or if females, under age and unmarried, in the public funds of Great Britain and Ireland, or upon real security, with power to vary such investments. And I authorize the said trustees and executors to apply the whole or any part of the presumptive legacies of any of my nephews or nieces to his or her maintenance, education or advancement in life, and to accumulate the residue, if any, by way of compound interest, but with power to apply the accumulations in manner aforesaid. And in case any of my said nephews or nieces should die under the age of 21 years, and being a niece or nieces unmarried, I direct that his or her presumptive legacy, together with any accumulations of interest thereon, shall be equally divided amongst such of my said nephews or nieces as shall attain the age of 21 years, or being a niece or nieces marry under that age.*

24. *Legacy to an Infirmary.*—I give to the Infirmary at the sum of *l.*, to be paid to the treasurer for the time being thereof, at the end of twelve calendar months from my decease, out of such part of my personal estate, as the law permits to be bequeathed to charitable purposes.

25. *Legacies to Religious Societies.*—I give and bequeath unto the Society for the Promotion of Christian Knowledge the sum of *l.*, to the Society for the Propagation of the Gospel in Foreign Parts, the sum of *l.*, and also to the Church Missionary Society, the sum of *l.*, and I direct that the said three legacies so bequeathed by me as last aforesaid, shall be respectively paid to the treasurers for the time being of the several societies or institutions, and I direct that the said two last-mentioned legacies shall be paid out of such part of my personal estate as may legally be devoted to charitable purposes [and shall be paid

* Of course any other destination thought desirable may be given to the legacy of the deceased nephew or niece. For instance, if the will contains a bequest to a residuary legatee, it may be said "shall become part of the residue of my personal estate."

out of that fund in preference to all other pecuniary legacies bequeathed by this my will].

26. *Legacy for the Benefit of the Poor of a Parish.*—I bequeath the sum of *l.* to the rector for the time being of the parish of , in the county of , to be distributed at his discretion amongst such poor inhabitants of that parish, not receiving alms or parochial relief, as he shall select.

27. *Residuary Bequest of Personal Estate.*—And as to all [other]* the personal estate and effects whatsoever and wheresoever (including leaseholds for years) † of which I shall be possessed, or over which I shall have any power of appointment or disposition at the time of my decease, I bequeath the same and every part thereof unto [my son] A. B., for his own absolute use and benefit, after payment thereout of my debts, funeral expenses, the charges of proving this my will, and any legacies which I may bequeath by it, or by any codicil thereto.

28. *Residuary Bequest of Personalty to Children, with Substitution of the Issue of deceased Children.*—I give and bequeath all the residue of my personal estate left after the payment of my debts, funeral and testamentary expenses, and the legacies given by my will or any codicil thereto, unto such child or children of mine as shall survive me, and the child or children living at my decease, of any child or children of mine dying before me, and, if more than one, in equal shares and proportions, as between brothers and sisters; but so that the child or children collectively of any deceased child of mine shall take such share only as their parent would have taken, if living.

29. *Residuary Bequest of Real and Personal Estate to one Person.*—I give, devise and bequeath all my real and personal estate whatsoever and wheresoever unto A. B., to hold the same unto him, his heirs, executors and assigns, according to the natures thereof respectively, for his own absolute use and benefit.

* If *no* legacies have been previously left, leave out the word "other."

† Omit these words, if the testator had no leaseholds.

30. *Residuary Bequest of Realty and Personalty to Children, and the Issue of deceased Children.*—I give the residue of my real and personal estate to such child or children of mine living at my death, and such issue of any child or children then deceased as shall survive me and attain the age of twenty-one years, and his, her or their heirs, executors, administrators and assigns respectively, in equal shares, as between brothers and sisters, but so that no issue of any my surviving grandchild shall be included in this gift, and so that the child or the children collectively of any deceased child or grandchild shall only take the share which his or their parent would have taken, if living. And I give to my trustees or trustee for the time being, full discretionary power to apportion my said residuary estate amongst the persons entitled thereto, and for that purpose by any deed or deeds to execute all necessary conveyances and appointments for that purpose, and if they or he think fit to sell or mortgage the same or any part thereof, or to charge any sum or sums, or any parts or part thereof for equality of partition.

31. *Bequest of Real and Personal Property to Trustees, in Trust for Sale.*—I give all my [real and] personal property, not otherwise effectually disposed of, unto and to the use of A. B. and C. D., (whom I hereby appoint the trustees of this my will,) their [heirs] executors, administrators and assigns. In trust, that my trustees or trustee will, as soon as expedient, convert [both] my [real and] personal estate into money, investing the same, after payment of my debts, legacies and funeral expenses, in the Government stocks of Great Britain and Ireland, or, &c.* And I declare that my trustees or trustee may sell at any time or times, in any manner and upon any terms in their or his absolute discretion, any part of my residuary estate [whether real or personal], as if they were absolute owners thereof. And that no purchaser shall see to the application of any purchase-money, or make any objection to anything my trustees shall do in or concerning any sale, on the ground of their

* Any other security which the testator deems a safe one may be here inserted.

or his character as a trustee. And that my trustees may pay debts and settle claims against my estate in the same manner, and with as ample a discretion as I might have done if living. [And while any of my real estate or leaseholds are unsold, may let them from year to year, or for any term not exceeding years, and apply the rents of leasehold and other hereditaments as income of my residuary estate.] And may vary any investments of trust money. And may, by written receipts, discharge all persons paying money to them on account of my residuary estate, or of the purchase of any part thereof. And I direct my trustees or trustee for the time being, to stand possessed of my said residuary real and personal estate, and of the proceeds thereof, after the conversion of the said estate or estates into money, upon trust, &c.*

32. *Bequest of Trust Fund to be divided amongst Children.*—(This and the four subsequent forms must be preceded by No. 31.)—Upon trust for all my children, or any my child, who, being sons or a son, shall attain twenty-one years, or, being daughters or a daughter, shall attain that age or marry, and if more than one, in equal shares. And as to the share or shares of any girl or girls, for her or their separate use, without power of anticipating or disposing of the income or capital thereof otherwise than by will.

33. *Income of Trust Fund to be paid to Wife during Life, and Fund afterwards divided amongst Children.*—(To follow No. 31.)—Upon trust to pay the income from time to time actually arising therefrom unto my wife during her life, for the maintenance of herself and my infant sons and unmarried daughters. And after her decease, then upon trust, &c. (*Add the preceding Form*, No. 32.)

34. *Income of Trust Fund to Wife for Life; Power to her to leave or give it to one or more of the Children,*

* By omitting the portions in brackets, the above form becomes one of a bequest of personalty only. Forms declaring the trusts on which the funds are to be held immediately follow; it will be observed that they are so arranged as to read on from the words "upon trust," at the end of this precedent.

as she may deem fit; and if she does not exercise the Power, then amongst them in equal Shares.—(Copy the last Form, No. 33, and then proceed:) Upon trust for all or any such one or more of my children, and in such manner and form in every respect as my said wife shall, so long as she shall remain unmarried,* by deed, will or codicil appoint. And in default of any such appointment, and so far as no such appointment shall extend, then upon trust. (*Add* No. 32.)

35. *In trust for Brothers and Sisters, and Nephews and Nieces.*—Upon trust for such of my brothers and sisters as shall survive me, and the issue living at my decease, if any, of my brothers and sisters who shall then be dead (other than the issue of a child or grandchild then living), in equal shares, as between or amongst children of the same parent. And so that the issue of any deceased brother or sister, or of any deceased brother's or sister's child or grandchild, shall collectively take only the share which such deceased brother or sister, or brother's or sister's child or grandchild, would have taken if living. And as to the share or shares of any girl or girls, for her or their separate use, without power of anticipating or disposing of the income or capital thereof, otherwise than by will.

36. *In Trust as to the Income for a living Person; the Capital to be divided amongst his Children on his Death.*—Upon trust to pay the income of the said trust fund to A. B., during his life. And after his death upon trust for such child or children of A. B., or such child or children of a son or daughter of A. B., who shall predecease him, as shall, if a son, attain the age of twenty-one years, or, if a daughter, attain that age or marry; the said fund to be divided equally between brothers and sisters, but so that the children of a deceased child of A. B. shall only take the share to which their parent would have been entitled had he or she survived his or her

* It is better not to permit the widow's power over the trust fund to continue after she is brought under the influence of a second husband.

parent, the said A. B. And as to the share or shares of any girl or girls, for her or their separate use, without power of disposing of the income or capital thereof otherwise than by will.

37. *In Trust for Persons named, or if they die before the Testator, then for their Issue.*—Upon trust for A. B. and C. D., if they shall survive me, in equal shares, and if either or both shall die before me, then as to the share to which the said A. B. or C. D. would have been entitled if living at my death, upon trust for his issue (other than the issue of a child or grandchild then living) in equal shares, as between children of the same parent.

XXI.

Power to Trustees to apply the Income of an Infant's Share in a Trust Fund to his Education and Maintenance.

I empower my said trustees (A) to apply all or any part of the yearly income to which, under the dispositions hereinbefore contained, each or any of my infant children [*or* "the infant children" of *another person, naming him*] shall be entitled, towards the maintenance and education, or otherwise for the benefit of such infant, during his or her minority, or at the option of my said trustees, to pay the same into the hands of the guardian of such infant, to be so applied, but for the application whereof by such guardian my said trustees shall not be responsible.*

XXII.

Power to Trustees to apply Part of the expectant Share of an Infant Legatee to his Advancement in the World.

I empower my said trustees in their discretion to advance and apply [any part not exceeding one-half of] the

* If a life interest is given to some other person, as for instance the widow before the fund is divided amongst the children; then at the point marked (A) should be inserted the words "after the death of" whoever may be entitled to the life interest.

capital to which, under any of the said bequests or disposi tions, each or any infant legatee shall be entitled or presumptively entitled in or towards his or her advancement in the world. (By leaving out the words in brackets power would be given to the trustees to advance the whole of the share of an infant legatee.)

XXIII.

*Power to appoint New Trustees.**

And I hereby declare that if the said trustees hereby appointed, or any of them, shall die in my lifetime, or if they or any of them, or any trustee or trustees to be appointed, as hereafter is provided, shall, after my death, die or desire to be discharged, or refuse or become incapable to act, then and so often the said trustees or trustee (and for this purpose every retiring or refusing trustee shall be considered a trustee) may appoint a new trustee or new trustees in the place of the trustee or trustees so dying or desiring to be discharged, or refusing or becoming incapable to act. And upon every such appointment the trust premises shall be transferred to and vested in the new trustee or trustees, either solely or with a continuing trustee or trustees, as the case may require.

XXIV.

An Indemnity to the Trustees under a Will.

And I declare that the trustees for the time being of this my will shall respectively be chargeable only with such moneys as they respectively shall actually receive, and shall not be answerable for each other, nor for any banker, broker, or other person in whose hands any of the trust moneys shall be placed, nor for the insufficiency or deficiency

* This should always be inserted in wills, when from the fact of there being property to divide amongst infants, the trust is likely to continue for some time.

of any stocks, funds, shares or securities, nor otherwise for involuntary losses.

XXV.

A direction that certain Legacies shall be paid in full in priority to the others.

I direct that the legacies hereinbefore given to [*naming the legatees*] shall be paid in priority to any other legacy given by my will.

XXVI.

Declaration that Legacies shall not be in Satisfaction of Debts.

I direct that no legacy or gift contained in my will shall (unless a contrary intention is expressed) be taken to be in satisfaction of any debt owing by me.

XXVII.

Provision that if a Legatee is dead the Legacy shall go to his Executors or Administrators.

And if any legatee be now dead, or die before me, I give the legacy intended for him or her to his or her executors or administrators, to be applied as if the same had formed part of the personal estate of such legatee at his or her decease.

XXVIII.

Direction that Legacies left by the Will are to be paid free of Legacy Duty.

I direct all the annuities and legacies given by my will or any codicil thereto to be paid free of legacy duty.

XXIX.

Declaration that Money advanced by the Testator during his Life to his Children shall be deducted from their Portions or Shares of his Estate.

I declare that all such moneys as I have or shall have advanced to any of my said children, or as shall be owing to me from any of them at my decease, shall be considered as part of my residuary estate, and shall be deducted from his, her or their respective shares.

XXX.

Declaration that Advancement shall not be in Satisfaction of Portions.

I declare that such advancements as I may have made, or may hereafter make, to any of my children [*or* nephews and nieces, &c.], shall be in addition to and not in satisfaction of any legacy or legacies, portion or portions, or other benefit given to him, her or them by my will.

XXXI.

Authority to Executors to defer calling in a Debt.

I authorize and empower, but do not require, my executors or executor, for the time being, to defer and postpone the calling in of any debt or debts, carrying interest, which may be owing to me from [*name*] at the time of my decease for such period as my executors shall think fit.*

* This is very often inserted, if an advance has been made to a near relative.

XXXII.

Proviso for rendering null and void all Bequests to Parties who shall seek to set aside the Will.

Provided always, and I do hereby direct and declare, that if any person or persons entitled to any benefit under this my will, shall in any wise dispute the validity thereof, or of any codicil or codicils which I may annex thereto, or commit, do, permit or suffer any act, deed, matter or thing whatsoever, whereby or by reason whereof my said will or any dispositions contained therein, or in any codicil or codicils annexed thereto, may be impeached, set aside, controverted, or prejudicially affected, then and in every such case all devises and bequests hereinbefore contained in favour of such persons respectively, who shall so act as aforesaid, shall cease and be void to all intents and purposes whatsoever, and go over to the person or persons who would have been entitled to the same in case the persons whose respective estates and interests are so forfeited as aforesaid had died in my lifetime.

XXXIII.

Memorandum reviving a Will revoked by Marriage.

I hereby declare that the above-written will shall operate and be constructed as to persons and things as if I had made the same on the day of , in the year . In witness, &c.*

XXXIV.

The Revocation of a Will.

I, A. B., of &c., hereby revoke an instrument bearing date, &c., and purporting to be my last will and testament,

* This memorandum, which should be written under the signature to the will, must be signed and attested, as if it were a new will.

which instrument I have deposited with [*name*], of &c. In witness, &c.*

XXXV.

Codicil reviving a Will previously revoked.

Whereas I, A. B., of &c., made my will on the day of , and have since revoked the same. Now I hereby annul such revocation, and declare that the said will is valid and subsisting. In witness, &c.

XXXVI.

Memorandum to be made on a Will when it is altered by a Testator.

Memorandum that I (*the testator*) have made with my own hand (*or* directed to be made) in this my will, the alterations hereinbefore specified (that is to say) in the line of the page, the words [*quoting them*] are erased, and the words [*quoting them*] are inserted in their stead. The words (*quoting*) in the line of the page; those in the lines of the page, &c., are erased. Between the words (*quoting*), and the words (*quoting*) in the line of the page, the words (*quoting*) are inserted. I declare the above writing so altered to be my will. In witness, &c.†

XXXVII.

Direction that a Wife shall be permitted to reside in the Testator's House for a certain Time after his Death; and that his Executors shall keep the Establishment for that Period.

I declare that my wife shall be at liberty to reside in

* This also must be executed as a will.

† This must be executed in all respects like a will.

my mansion-house (describing it by name or situation) for calendar months after my decease; and that if she shall reside there, my executors shall keep up my establishment there for that period upon the same scale and in the same mode as it had been usually maintained in my lifetime, and defray the housekeeping expenses, servants' wages, taxes, and all other incidental outgoings out of my personal estate.

XXXVIII.

Direction for taking an Inventory where Furniture or other Goods and Chattels are left to a Person (a Wife for instance) *for her Life; and then over to the other Persons.*

(*This clause must immediately follow that in which such a bequest is made.*) And I direct that my executors shall cause an inventory to be taken of the chattels comprised in the preceding bequest, and two copies to be made thereof, and respectively signed by my said wife and my executors before the delivery of such chattels to her, one of such copies to be delivered to her and the other to be kept by them.

XXXIX.

Codicil appointing a Trustee and Executor in the Place of a deceased Trustee and Executor appointed by the Testator's Will.

This is a codicil to the last will and testament of me, A. B., &c., which bears date the day of . Whereas by my said will I have appointed C. D. to be one of the trustees and executors thereof. And whereas the said C. D. having lately died, I am desirous that E. F., of &c., shall be substituted as a trustee and executor of my said will in the place of the said C. D. Now, therefore, I do hereby appoint the said E. F. to be one of the trustees

and executors of my said will in the place of the said C. D. deceased, and I do hereby declare that my said will shall be construed and take effect throughout as if the name of the said E. F. had been inserted in my said will instead of the said name of the said C. D., and in all other respects I do confirm my said will. In witness, &c.

[An Attestation Clause, signed by two witnesses, must be added, as in case of a will.]

XL.

Codicil revoking Legacies given by a Will, and also giving other Legacies.

This is a codicil to the last will and testament of me, A. B., of &c., which bears date the day of . Whereas by my said will I have given legacies of *l.* to C. D., and of *l.* to E. F., now I hereby revoke the said legacies. And in addition to the legacies given by the said will, and not revoked by this codicil, I give a legacy of *l.* to G. H. and a legacy of *l.* to I. K. And in all other respects I do confirm my said will. In witness, &c.

[The Attestation Clause, signed by two witnesses, must be added, as in case of a will.]

XLI.

Disclaimer of the Trust and Executorship of a Will.

To all to whom these presents shall come, A. B., of &c., sends greeting. Whereas G. H., late of, &c., deceased, duly signed and executed his last will and testament in writing, bearing date the day of , and thereby gave, devised and bequeathed all his real and personal estate unto the said A. B. and C. D., their heirs, executors, administrators and assigns upon certain trusts therein

declared, and the said testator thereby appointed the said A. B. and C. D. executors of his said will. And whereas the said testator departed this life on or about the day of without having altered or revoked the said will. And whereas the said A. B. hath never in any respect acted, and hath wholly refused to act, in proving and executing the trusts of the said will. Now these presents witness that he the said A. B. hath from the decease of the said G. H. fully and absolutely disclaimed and renounced, and by these presents doth fully and absolutely renounce and disclaim all the real and personal estate and effects whatsoever given, devised or bequeathed by the said will, and also the offices of trustee and executor of the said will, and all trusts, powers and authorities whatsoever by the said will expressed, to be made or given to them the said A. B. and C. D., their heirs, executors, administrators and assigns, and all rights and privileges thereunto relating, or in anywise belonging or annexed. In witness, &c.

[A document of this kind should be executed by a trustee, or executor, whenever he does not intend to act. It must be executed as a deed; that is, the disclaiming trustee must stick a wafer at the end of his signature, and, placing his finger upon this just after he has signed, must say, in the presence of witnesses, "I deliver this as my act and deed." There should be two witnesses, who need only sign as "witnesses."]

XLII.

Forms used in proving a Will.

We only give here the forms used in proving a will before a district registrar when the probate is not contested; for this is the only case in which the assistance of a solicitor or proctor can possibly be dispensed with. Nor do we give the forms of the oaths to be subscribed by the executors, because these will be supplied at the office.

If the will did not contain a proper attestation clause,

the following affidavit must be handed to the district registrar.

*Affidavit of attesting witness.**

In Her Majesty's Court of Probate. The district registry of .

In the goods of A. B., deceased.

I, C. D., of , in the county of , make oath (*or* solemnly affirm) that I am one of the subscribing witnesses to the last will and testament (*or* codicil, *as the case may be*,) of the said A. B., late of , in the county of , deceased, the said will (*or* codicil) now hereunto annexed, bearing date , and that the said testator executed the said will (*or* codicil) on the day of the date thereof, by signing his name at the foot or end thereof, (or if the testator signed elsewhere the place must be stated, as "at the end of the attestation clause thereof," and it must then be added, "intending the same as his final signature to his will,") as the same now appears thereon in the presence of me and of , the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will (*or* codicil) in the presence of the said testator.

(Signed) C. D.

Sworn at , on the day of , 18 .

At the time of applying for probate the following affidavit must be sent to the Commissioners of Inland Revenue in London.

In Her Majesty's Court of Probate. The district registry of .

In the goods of A. B., deceased.

The day of , 18 .

I, C. D., of (1), make oath (*or* solemnly affirm) that I am one of the executors (*or* the executor) named in the last will and testament (2) of the said A. B.,

* This must be sworn before a person authorized to administer oaths under the Act. Information as to the persons thus authorized may no doubt be obtained at the registry.

late of , deceased; that the said deceased died on or about the day of , in the year of our Lord one thousand eight hundred and , at (3) , and that the said deceased at the time of his death had a fixed place of abode within the said district of , at , and that the personal estate and effects of the said deceased, which he in any way died possessed of or entitled to, and for or in respect to which a probate of the said will (*and* codicil, *if any*) is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if any leaseholds*, say "including the leasehold estate or estate for years of the said deceased, whether absolute or determinable on a life or lives,") and without deducting anything on account of the debts due and owing from the said deceased, and under the value of pounds, to the best of my knowledge, information and belief; if the deceased had no leaseholds, add "and I (*or* we) make oath that the said deceased is not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my (*or* our) knowledge, information or belief."

(Signed) C. D.

Sworn at , on the day of , before me (person authorized to administer oaths under the Act).

(1) Insert the names, residences, and titles or professions of the persons making the affidavit.

(2) Insert codicils, if any.

(3) Insert place of death, or set forth the reasons whereby the same cannot be furnished.

XLIII.

Forms used on the Grant of Letters of Administration.

We omit the oath, for the reason given above.

Affidavit for the Commissioners of Inland Revenue when the Will is annexed.

In Her Majesty's Court of Probate. The district registry of

In the goods of A. B., deceased.

The day of , 18 ,

I, C. D., of (1) the party applying for administration with the will (2) annexed of the personal estate and effects of A. B., late of , deceased, make oath (*or* solemnly affirm) and say as follows. That the said deceased died on or about the day of , one thousand eight hundred and , at (2) , and that the personal estate and effects of the said deceased, which he in any way died possessed of, or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially (*if any leaseholds, insert clause as in last form*), and without deducting anything on account of the debts due, and owing from, the said deceased, now under the value of pounds to the best of my knowledge, information and belief (*if no leaseholds, insert clause as in last form*).

(Signed) C. D.

Sworn at , on the day of , before me (person authorized to administer oaths under the Act).

(1) Insert the names, residences, and titles or professions of the persons making the affidavit.

(2) Insert codicils if any.

(3) Insert the place of death, or set forth the reason why the same cannot be furnished.

Affidavit for the Commissioners of Inland Revenue when there is no Will.

The same as the last form, omitting the words which relate to the Will.

Administration Bond when there is no Will.

Know all men by these presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto G. H.,* the Judge of Her Majesty's Court of Probate, in the sum of *l.* of good and lawful money of Great Britain, to be paid to the judge of the said court for the time being, for which payment, well and truly to be made, we bind ourselves and each of us for the whole, our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated the day of , in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the abovenamed A. B., the [state here the relationship of A. B. to the testator, or the character in which letters of administration were granted to him] of I. J., late of , deceased, who died on the day of , do, when lawfully called on in that behalf, make or cause to be made, a true and perfect inventory of all and singular the personal estates and effects of the said deceased which have or shall come to hands, possession or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit or cause to be exhibited into the district registry of , attached to Her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased, at the time of (his *or* her) death, which at any time after shall come to the hands or possession of any other person or persons for , do well and truly administer according to law (that is to say), do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration, whenever required by law so to do, and all the rest and residue of the said personal estate and effects to deliver and pay unto such person or persons as shall be entitled thereto, under an

* At present Sir Creswell Creswell.

Act of Parliament, intituled "An Act for the better settling of Intestate Estates," and if it shall hereafter appear that any last will and testament is made by the said deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly, if the said [the administrator], being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of
L. K., Commissioner,
M. N., District Registrar of .
Or,
O. P., Clerk to the District Registrar of .

Administration Bond when there is a Will annexed.

Know all these men by these presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto G. H.,* the Judge of Her Majesty's Court of Probate, in the sum of pounds, of good and lawful money of Great Britain, to be paid to the said G. H., or to the judge of the said court for the time being, for which payment, well and truly to be made, we bind ourselves and each of us for the whole, our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and . The condition of this obligation is such that if the abovenamed A. B., the (insert character or relationship of the administrator) of I. J., late of deceased, who died on the day of , do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular

* Sir Creswell Creswell.

the personal estate and effects of the said deceased which have or shall come to [his *or* her] hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the district registry of , attached to Her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, do well and truly administer (that is to say), do pay the debts of the said deceased, which [he *or* she] did owe at [his *or* her] decease, and then the legacies contained in the said will annexed, to the said letters of administration, so to the said I. J. committed as far as personal estate and effects will thereto extend; and the law charge and further do make, or cause to be made, a true and just account of [his *or* her] said administration, when [he *or* she] shall be thereunto lawfully required; and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered, in the presence of
K. L., Commissioner,
M. N., District Registrar of :
Or,
O. P., Clerk to the District Registrar of .

Inventory of the Personal Estate and Effects of a Testator or Intestate.

A true declaration of all and singular the personal estate and effects of A. B., late of , deceased, who died on the day of , at , and had at the time of his death a fixed place of abode at , within the district of , which have at any time since his death come to the hands, possession or knowledge of C. D., the administrator, with the will of the said A. B. (*or* administrator, *as the case may be*) made and exhibited upon and by virtue of the oath

(*or* solemn affirmation) of the said C. D., as follows, to wit:—

	£	s.	d.
First, the declaration declares that the said deceased was at the time of his death possessed of or entitled to . . [The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.]			

Lastly, this declarant saith that no personal estate or effects of or belonging to the said deceased, have at any time since his death come to the hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of , 18 , the said C. D. was duly sworn to (*or* solemnly affirmed) the truth of the above inventory before me.

Signature of person authorized to administer oaths under the Act.

XLIV.

List of District Registries.

As it may often be convenient to know at which district registry a will should be proved, if probate be not taken out in London, we subjoin a list of the forty district registries, together with the districts attached to each:—

Place.	*District.*
Bangor	Counties of Carnarvon and Angelsea.
Birmingham	County of Warwick (including the City of Coventry).
Blandford ...	County of Dorset (including the Town of Poole).
Bodmin	County of Cornwall.
Bristol	Bristol and Bath present County Court Districts.

Place.	*District.*
Bury St. Edmunds ...	Western Division of the County of Suffolk.
Canterbury .	Eastern Division of the County of Kent (including the City of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the County of Kent).
Carlisle	Counties of Cumberland and Westmoreland.
Carmarthen .	Counties of Cardigan, Carmarthen (including the Town of Carmarthen), and Pembroke (including the Town of Haverfordwest).
Chester	County of Chester (including the City of Chester).
Chichester ...	Western Division of the County of Sussex.
Derby.....	County of Derby.
Durham.....	County of Durham.
Exeter	County of Devon (including the City of Exeter).
Gloucester ...	County of Gloucester (including the City of Gloucester), except the present Bristol County Court District.
Hereford ...	Counties of Radnor, Brecknock, and Hereford.
Ipswich	Eastern Division of the County of Suffolk, and North Division of the County of Essex.
Lancaster ...	County of Lancaster, except the Hundred of Salford and West Derby, and the City of Manchester.
Leicester ...	Counties of Leicester and Rutland.
Lewes.....	Eastern Division of the County of Sussex (including such of the Cinque Ports and their dependencies as are situate in the County of Sussex).
Lichfield.....	County of Stafford (including the City of Lichfield).
Lincoln	County of Lincoln (including the City of Lincoln).
Liverpool ...	Hundred of West Derby in Lancashire.
Llandaff.....	Counties of Glamorgan and Monmouth.
Manchester .	City of Manchester and Hundred of Salford.
Newcastle-on-Tyne	County of Northumberland (including the Towns and Counties of Newcastle-on-Tyne and Berwick-upon-Tweed).
Northampton	County of Bedford and Southern Division of Northamptonshire (including the Town of Northampton).
Norwich.....	County of Norfolk (including the City of Norwich).
Nottingham .	County of Nottingham (including the Town of Nottingham).
Oxford	Counties of Oxford (including the University of Oxford), Berks, and Bucks.
Peterborough	Northern Division of Northampton and Counties of Huntingdon and Cambridge (including the University of Cambridge).

Place.	*District.*
Salisbury ...	County of Wilts.
Shrewsbury .	Counties of Salop and Montgomery.
St. Asaph ...	Counties of Flint, Denbigh, and Merioneth.
Taunton	Western Division of the County of Somerset.
Wakefield	West Riding of the County of York.
Wells	Eastern Division of the County of Somerset, except the present Bath County Court District, and the part in Somersetshire of the present Bristol County Court District.
Winchester .	County of Hants (including the Town of Southampton).
Worcester ...	County of Worcester (including the City of Worcester).
York	North and East Riding of the County of York (including the City of York and Ainsty, and the Town and County of Kingston-on-Hull).

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